

*Dental Board
of California*



**Enforcement
Program
Monitor***

Initial Report

**Prepared Pursuant to
Senate Bill 26 (Figueroa)**

*** Under Appointment by
Kathleen Hamilton
Director, Department of
Consumer Affairs**

NewPoint Group[®]
Management Consultants

August 23, 2002

August 23, 2002

Ms. Kathleen Hamilton, Director
California Department of Consumer Affairs
400 R Street, Suite 3000
Sacramento, California 95814

Dear Ms. Hamilton,

This report presents results of our Initial Assessment of the Dental Board's Enforcement Program. Pursuant to SB 826 (Figueroa), our initial assessment efforts focused primarily on the Enforcement Program's overall effectiveness and efficiency. This included review and analysis of:

- ❖ The quality and consistency of complaint processing and investigation
- ❖ Timeframes needed for complaint handling and investigation
- ❖ Complaint backlogs
- ❖ Other related managerial, organizational, and operational problems, issues, and concerns.

Overall, results of the initial assessment indicate that:

- ❖ There are numerous significant inconsistencies in the way that complaints are processed and investigated
- ❖ It is taking much too long to resolve or investigate complaints, which works at cross-purposes to the interests of consumers, licensees, and the Dental Board
- ❖ As a result of staff turnover and the state's hiring freeze, backlogs have begun to accumulate which, in turn, could cause significant further deterioration in the level of service provided.

Finally, there does not appear to be any documented strategy or plan to fully address the above issues and the many other needs for improvement that exist. We are concerned that, in the absence of increased attentiveness to these and other issues by the various parties involved, Enforcement Program performance levels are very likely to deteriorate further during the current fiscal year.

Contained in this report are more than forty (40) recommendations for improvement. Some of these recommendations can potentially be implemented fairly quickly (i.e., "Quick Hits"), while others will require completion of additional analyses over the next several months before final recommendations and implementation strategies can be developed. The Dental Board's Chief of Enforcement has already implemented several of the recommendations, and implementation of others is currently underway.

We would like to take this opportunity to thank all of the management and staff at the Department of Consumer Affairs and at the DBC who have provided information and

August 23, 2002
Ms. Kathleen Hamilton

Page 2

assistance to us in completing this assessment. Without exception, staff have cooperated fully with us, and have attempted as best they could to promptly respond to our requests for information and assistance. In this regard, we wish to give special recognition to (1) Ms. Terri Ciau, who has served as the Department's Contract Manager and as liaison to various Departmental resources, and (2) Ms. Lynn Thornton, the Dental Board's newly appointed Chief of Enforcement, who helped immeasurably in providing us detailed information about the Dental Board's Enforcement Program and associated business processes.

We appreciate the opportunity to be of service to the Department of Consumer Affairs and to the Dental Board of California. If you have any questions, please call me in our Sacramento office at (916) 442-0469.

Very truly yours,
NewPoint Group[®], Inc.



Benjamin M. Frank
Director

TABLE OF CONTENTS

<i>Section</i>	<i>Page</i>
Transmittal Letter	
Table of Contents	
<u>Executive Summary</u>	
A. Background	ES-1
B. Overall Program Assessment	ES-2
<i>General Operations</i>	ES-2
<i>Use of Board-Employed Peace Officers</i>	ES-3
<i>Constraints Associated With Limited-Term Peace Officer Status</i>	ES-5
<i>Implications of Statewide Hiring Freeze</i>	ES-6
<i>Financial Management</i>	ES-7
C. Assessment of Specific Issues	ES-7
<i>Supervisory and Management Practices</i>	ES-7
<i>Workload Allocations and Processes</i>	ES-8
<i>Case Processing Delays</i>	ES-9
<i>Attorney General's Office Processes</i>	ES-10
<i>Malpractice Settlements and Judgments</i>	ES-11
<i>Other Records Issues</i>	ES-12
<i>Customer Relations</i>	ES-12
<i>Disclosure Policies</i>	ES-13
<i>Proactive Enforcement</i>	ES-14
<i>Drug Diversion Program</i>	ES-14
<i>Allegations of Enforcement Bias</i>	ES-15
<u>Section I – Introduction</u>	
A. Background	I-2
B. Objectives and Scope of the Enforcement Program Monitor	I-5
C. Methodological Approach and Schedule	I-6

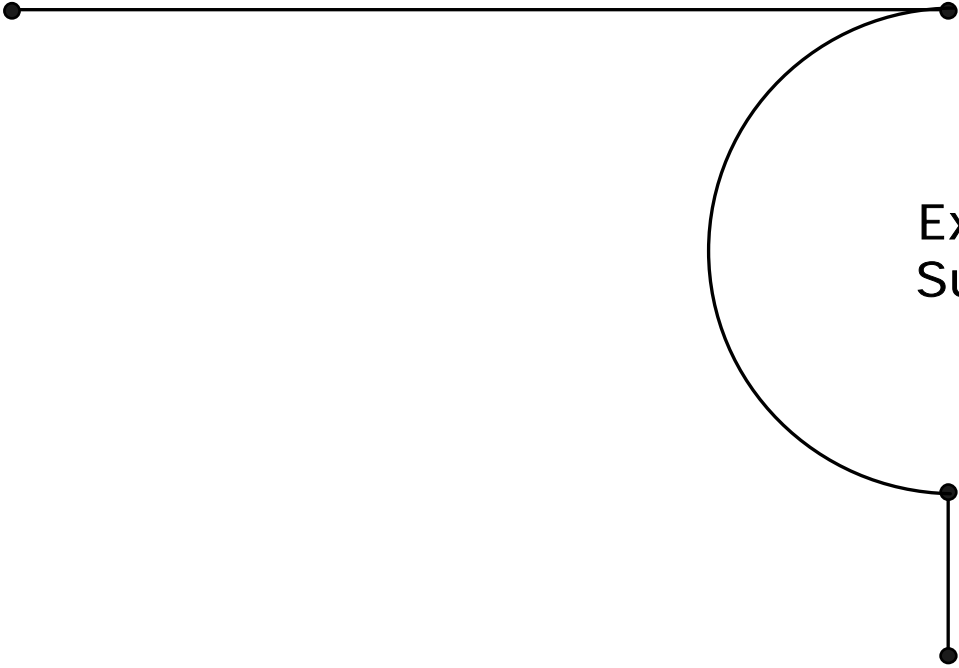
<i>Section</i>	<i>Page</i>
Section II – Overall Assessment of the Enforcement Program	
A. Organization and Staffing	II-2
<i>Current Organization and Staffing</i>	II-2
<i>Recent Staffing-Related Legislation and Studies</i>	II-5
<i>Implications of Statewide Hiring Freeze</i>	II-7
<i>Conclusions and Recommendations</i>	II-8
B. Overall Operational Performance	II-9
<i>Data Constraints</i>	II-9
<i>Complaints Received</i>	II-9
<i>Complaint Unit Closures and Referrals</i>	II-10
<i>Complaints Pending in the Complaint Unit</i>	II-10
<i>Complaint Investigations</i>	II-11
<i>Complaints Pending in the Investigations Unit</i>	II-11
<i>Complaint Inspections</i>	II-12
<i>Conclusions and Recommendations</i>	II-12
C. Financial Management	II-13
<i>Data Constraints</i>	II-13
<i>Financial Management Review</i>	II-13
<i>Conclusions and Recommendations</i>	II-17
Section III – Assessment of Specific Organization, Management, and Staffing Issues	
A. Supervisory Practices and Related Issues	III-2
<i>Conclusions and Recommendations</i>	III-3
B. Use of Board-Employed Peace Officers	III-4
<i>Sub-Issue 1(a)— Supplementing the Sworn Investigative Staff with Specialized Non-Sworn Assistance</i>	III-4
<i>Sub-Issue 1(b)—Bifurcating the Investigative Process</i>	III-5
<i>Sub-Issue 2—Contracting with Another Agency for Peace Officer Investigative Services</i>	III-7
<i>Conclusions and Recommendations</i>	III-7
C. Impact of Positions With Limited-Term Peace Officer Status	III-9
<i>Conclusions and Recommendations</i>	III-10

<i>Section</i>	<i>Page</i>
D. Staffing and Workload Issues	III-11
<i>Scope of This Planning Subject</i>	III-11
<i>Investigator Caseloads and Staffing</i>	III-11
<i>Time Measurement System</i>	III-12
<i>Probation and Inspection Cases (Inspector Caseloads)</i>	III-12
<i>CSA Workload</i>	III-13
<i>Conclusions and Recommendations</i>	III-14
E. Allegations of Enforcement Bias	III-15
<i>Conclusions and Recommendations</i>	III-15
F. Enforcement Strategic Plans	III-16
<i>Conclusions and Recommendations</i>	III-16
G. Documentation of Policies and Procedures	III-17
<i>Conclusions and Recommendations</i>	III-17
 <u>Section IV – Assessment of Specific Operations, Records, and Cycle Time Issues</u>	
A. Case Processing Delays and Case Aging	IV-2
<i>Wide Scope of the Need</i>	IV-2
<i>Conclusions and Recommendations</i>	IV-3
B. Attorney General's Office (AGO) Processes	IV-6
<i>Process and Cycle Time Objectives and Constraints</i>	IV-6
<i>Constraints on Recent and Current AGO Processes and Case Aging</i>	IV-6
<i>Impact of FY2001/02 Budget Changes</i>	IV-7
<i>Other Related Factors</i>	IV-7
<i>Conclusions and Recommendations</i>	IV-8
C. Case Investigation and Records Issues	IV-10
<i>Malpractice Settlements and Judgments</i>	IV-10
Conclusions and Recommendations	IV-12
<i>Other Investigations and Records Issues</i>	IV-12
Conclusions and Recommendations	IV-14
D. Other Issues Affecting Operations	IV-15
<i>Conclusions and Recommendations</i>	IV-16

<i>Section</i>	<i>Page</i>
-----------------------	--------------------

Section V – Assessment of Other Potential Issues

A. Customer Relations	V-2
<i>Conclusions and Recommendations</i>	<i>V-2</i>
B. Disclosure Policies	V-4
<i>Conclusions and Recommendations</i>	<i>V-4</i>
C. Proactive Enforcement	V-5
<i>Conclusions and Recommendations</i>	<i>V-5</i>
D. Drug Diversion Program	V-6
<i>Conclusions and Recommendations</i>	<i>V-7</i>



Executive
Summary

EXECUTIVE SUMMARY

A. Background

- ❖ NewPoint Group, Inc. has completed Phase I of a two-year, four-phase contract to provide Enforcement Monitor services related to the Dental Board of California (DBC). The Enforcement Monitor requirement was legislated in 2001 (SB 26, Figueroa) to assist the Department of Consumer Affairs (DCA) and the Legislature in improving performance of the DBC's Enforcement Program.
- ❖ This report presents the results of our initial assessment of the DBC's Enforcement Program, including recommendations where appropriate at this early stage in the project. Recommendations are of two types: (1) short-term recommendations that can be implemented immediately without special budgetary or other external approvals, and (2) longer-term recommendations that should be addressed as part of the development of an Enforcement Program Improvement Plan during Phase II of this project.
- ❖ The Dental Board licenses about 30,000 dentists and regulates both dentists and persons licensed by the Committee on Dental Auxiliaries (COMDA), such as dental hygienists and dental assistants. The Board's mission is to protect California consumers through the examination and licensing of dental professionals and by the enforcement of laws and standards of practice that govern dentistry in California. Recently enacted legislation (AB 269, Correa) further reinforces this mission by providing that:

Protection of the public shall be the highest priority for the Dental Board in exercising its licensing, regulatory, and disciplinary functions.

Wherever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

- ❖ The Dental Board is entirely self-funded, primarily from application, examination, and license fees it collects. Its authorized FY2001/02 budget was about \$7.2 million, of which approximately \$5 million (70 percent) was used to support its Enforcement Program. There are 31 authorized Enforcement Program positions located in two offices, i.e., the Sacramento (North) headquarters and a branch (South) enforcement office in Tustin. Fourteen of the 31 authorized positions are sworn peace officers, although four have only limited-term peace officer status. Also, four of the 12 investigator positions are currently vacant. Other Enforcement Program positions include:
 - ❑ Four inspectors (non-peace officers) who monitor probationers and investigate certain less serious complaints
 - ❑ Three consumer service analysts (CSAs) who staff the Sacramento-based "Complaint Unit" and are responsible for resolving complaints not referred to investigators or inspectors

- ❑ Two full-time dental consultants and one part-time consultant who evaluate complaints involving quality of care issues
- ❑ Eight other non-sworn clerical, analyst, and supervisory positions.

B. Overall Program Assessment

General Operations

- ❖ Enforcement Program operational performance is difficult to evaluate because of the poor quality of statistical data that has been produced since at least the mid-1990s. After extended efforts, and special assistance by the new Chief of Enforcement, we were able to obtain some basic data on FY2001/02 operations that seem to reasonably represent actual performance (despite some inconsistencies in case aging data). However, any effort to reconstruct historical data probably would be fruitless, thereby restricting substantially the types of analyses than can be performed.
- ❖ Given the above limitations, in **Table E-1** below, we outline a few key operating statistics from FY2001/02.

TABLE E-1

Selected FY2001/02 Operating Statistics

Total Complaints Received	3,178
Referred to Inspectors	259
Referred to Investigators	556
Retained by CSAs	2,363
Total Complaints Closed	
By Inspector	Unknown
By Investigators	462
By CSAs	2,453
Complaints Pending (06/30/02)	
Inspector Cases (as of 06/04/02)	51
Investigator Cases	482
CSA Cases	971
Attorney General Cases	
Referrals	118
Accusations Filed	62

- ❖ Of particular concern is the time it takes to resolve and investigate complaints. Based on limited FY2001/02 case aging information, it appears that:
 - ❑ On average, it took about 2½ months (74 days) to process complaints before they were referred to investigators. About 5 months (150 days) on average were required for the Complaint Unit to close complaints that were not referred to investigators.
 - ❑ In addition to the above 2½ month processing time, an average of about 10 months (300 days) were needed by investigators to close cases in FY2001/02. Thus, the average aging of closed cases was about 12½ months. Nearly one-half of all closures took more than a year, and 15 percent took longer than two years.
 - ❑ We do not have aging data on cases referred to the Attorney General's Office (AGO); this information is not maintained by either the DBC or the AGO. However, based on general monitoring reports we reviewed and interviews we conducted, it would not be unfair to state that, on average, another year will pass before these cases are concluded.

CONCLUSIONS AND RECOMMENDATIONS REGARDING GENERAL OPERATIONS

- ❑ Initial efforts by the new Chief of Enforcement to improve statistical reporting capabilities should be encouraged and supported with appropriate resources. The DBC needs major enhancements to its complaint tracking system, including regular monthly, quarterly, and annual reporting of Enforcement Program workload and performance. Reports of this type also should be provided to the DBC's governing Board and the Legislature on a periodic basis.
- ❑ Complainants are now experiencing what, in our view, are unacceptable levels of delays in the handling of their cases. This subject is discussed further under the heading of "Case Processing Delays and Case Aging."

Use of Board-Employed Peace Officers

- ❖ This is one of three key issues that impact Enforcement Program staffing. It deals with the question of whether the Board should employ sworn peace officers (investigators) to conduct investigations. This issue is further divided into two sub-issues, as follows:

Sub-Issue 1: *Should peace officers perform all of the work on cases screened for investigation by CSAs? This sub-issue is further divided into two potential implementation alternatives: (a) the use of non-sworn investigative assistants to help sworn personnel complete case investigations, and (b) the assignment of all investigative steps for certain cases to non-sworn personnel.*

Sub-Issue 2: *Should the Dental Board employ its own peace officers or contract with another state agency for these services?*

- ❖ Regarding Sub-Issue 1(a), use of investigative assistants in lieu of some sworn positions, we do not have sufficient information on the assistance-type tasks that non-sworn personnel could perform at the DBC. However, using information obtained from the much larger Enforcement Program at the Medical Board of California (MBC), we tentatively concluded that no more than one or two full-time “investigative assistants” might be justified statewide. Even this level is questionable.
- ❖ With respect to Sub-Issue 1(b), assignment of all investigative steps for certain cases to non-sworn personnel, we are unalterably opposed to bifurcating the investigative process in what is already a relatively small peace officer unit. Previous analyses of this issue failed to recognize that the number of dentists involved is about 40 percent less than the number of cases because many dentists have multiple complaints being investigated concurrently (e.g., between 2 and 24 cases, according to recent assignment logs). It would be very difficult to determine at the outset which cases could be assigned to a non-sworn investigator and which should not. Cost savings of this alternative would be minimal, primarily because the state pays FICA for non-sworn classifications but not for sworn. Additionally, a decrease in the employment and training qualifications of some DBC investigators may send the wrong signal to consumer advocacy groups and the public-at-large, just at a time when the Legislature is trying to improve the enforcement function of this Board. Finally, we note that the DCA’s Division of Investigation (D of I) uses only peace officers to conduct investigations of complaints from a variety of licensing entities, including architects, barbers, cosmetologists, etc. Reallocation of some DBC cases from peace officers to a non-sworn class would be inconsistent with the long-standing, accepted D of I practice, and could further damage public perception.
- ❖ As for Sub-Issue 2, contracting for peace officer services, we evaluated this alternative on a very general, preliminary basis as it pertains to contracting with the D of I. The analysis determined that case aging in the D of I currently might not be appreciably better than at the DBC. Also, we were told that all D of I investigators are “generalists” and, therefore, there would be no specialization in Dental Board cases. Calendar time and budget constraints precluded analysis of the potential for contracting with either the Medical Board or the Department of Justice.

CONCLUSIONS AND RECOMMENDATIONS REGARDING USE OF PEACE OFFICERS

- ❑ Preliminarily, we do not support reallocating some of the current DBC peace officer workload to an “assistant-type” of non-sworn position because we are not convinced that there is sufficient work of this type to (1) efficiently utilize the non-sworn person(s), and (2) continue to maintain a fully trained critical mass of peace officers.
- ❑ We also oppose bifurcating the investigative caseload by assigning some cases to peace officers and some to non-sworn investigators. This

- concept has minimum potential to produce advantages that outweigh the disadvantages.
- ❑ Contracting with another state agency to conduct complaint investigations may be a viable alternative, but much more analysis of policies, procedures and costs would be required before objective decisions can be made

This leads to the following recommendations:

- ❑ Forego any further analysis of the potential use of non-sworn investigators to replace some of the DBC's peace officers. Future analyses should focus on whether the DBC's existing number of authorized investigator positions is sufficient to sustain the delivery of basic services, and not on whether fewer peace officers are warranted.
- ❑ Forego any further analysis of contracting for peace officer services, at least for the two-year period of the monitoring contract.
- ❑ Concentrate consultant and DBC resources on developing and implementing a plan to improve the Enforcement Program over the next two years. In other words, we support giving the DBC ample opportunity to improve its services once it has in place a new management and supervisory team, and a fully functioning governing Board. If significant improvement is not achieved within a reasonable period of time, then alternatives to maintaining an independent Enforcement Program may be considered.

Constraints Associated With Limited-Term Peace Officer Status

- ❖ The DBC has four investigator positions with legislatively restricted, limited-term (LT) peace officer status (i.e., the *positions* are permanent but the *peace officer status* of persons appointed to the positions is limited-term). All of the LT positions have been assigned to the Tustin Office, where the LT restriction appears to have contributed to significant recruitment, turnover, and performance problems. For example, average aging of *currently active* Tustin office cases is 87 percent higher than in the Sacramento Office (457 days compared to 245 days). Some cases have sat for many months with no one assigned, in part because of excessive employee turnover and extended vacancy problems.

CONCLUSIONS AND RECOMMENDATIONS REGARDING LIMITED-TERM PEACE OFFICER STATUS

- ❑ The limited-term restriction is clearly hampering the ability of the DBC to operate effectively. Eliminating this restriction should not create any long-term staffing situation that is not resolvable through established budget processes.
- ❑ In order to provide the DBC with adequate resources, we recommend that the limited-term restriction on peace officer appointments be

repealed so that appointments to the four affected positions can be made on a permanent basis.

Implications of Statewide Hiring Freeze

- ❖ The third critical staffing issue relates to the current statewide hiring freeze that is applicable to the DBC. The Enforcement Program currently has four vacancies among its 12 authorized investigator positions. The new Chief of Enforcement has submitted a request for an exemption from the hiring freeze. However, there is a long lead-time and considerable uncertainty associated with obtaining approval of such a request.
- ❖ The statewide hiring freeze is probably the most critical issue currently facing the DBC in terms of maintaining a credible Enforcement Program, yet this issue has received little or no attention to date. A variety of adverse impacts on Enforcement Program operations and performance are likely to surface during the current fiscal year as a result of current position vacancies. It is unreasonable to expect that the DBC's small pool of eight investigators can effectively provide needed Enforcement Program services on a statewide basis. It is even more unreasonable to expect that these few staff can improve service levels or provide other related services that consumers or licensees need.

CONCLUSIONS AND RECOMMENDATIONS REGARDING THE HIRING FREEZE

- ❑ The DBC needs to immediately develop a specific plan to obtain broad-based sponsorship and support for obtaining an exemption from the hiring freeze so that it can fill currently vacant investigator series positions. A high priority needs to be placed on this initiative, and the exemption request needs to be submitted for approval as quickly as practicable. The DBC also needs to submit a request to be exempted from the hiring freeze so that it can convert two currently filled investigator positions from a limited-term to a permanent peace officer status.
- ❑ Failure to obtain the freeze exemption needed to fully staff the Enforcement Program probably will obviate the ability of the DBC to implement many of the recommended improvements contained in this report. Moreover, the status quo in terms of case aging and other less-than-desired performance results may not be maintained. That is, without the exemption—and the elimination of the limited-term peace officer restriction on four investigator positions—performance is going to worsen before it gets better.
- ❑ A contingency plan is needed now to address current imbalances between workload and staffing. Assuming that the DBC's exemption request to fill vacant investigator positions is not approved, which is highly likely, the Board may need to adopt policies to not investigate certain categories of complaints, or to conduct investigations differently from how they are currently performed.

Financial Management

- ❖ We experienced considerable difficulty attempting to reconstruct and analyze the DBC's Enforcement Program budget and expenditure history. Lack of knowledge in this area has tended to result in the generation of financial data that are often incorrect, incomplete, or misleading.
- ❖ Recent expenditure projections have not proven very accurate. In FY2001/02, this resulted in first notifying the AGO that its budget would be reduced from \$1.2 million to \$950,000, then four months later changing the limit to \$1.1 million. This first resulted in cessation of AGO work on many cases, and then re-starting some of these cases when the budget was increased to \$1.1 million. This start-and-stop process results in wasted work and more extended case aging.
- ❖ Of perhaps greater concern are the ongoing budget surpluses that have accumulated at times when significant Enforcement Program needs have not been addressed. In other words, funds were available for some of the needed improvements, but were not spent for these or other purposes.

CONCLUSIONS AND RECOMMENDATIONS REGARDING FINANCIAL MANAGEMENT

- ❑ DBC management and staff need to become much more directly involved in preparing projections of their expenditures and also need to strengthen oversight and control over their fiscal management information systems to assure that the information produced is accurate and reliable. The DBC simply cannot afford to continue to under-spend its authorized budget by significant amounts (i.e., by more than \$1.5 million over the past five years) while neglecting needs to improve Enforcement Program services and performance.

C. Assessment of Specific Issues

Summarized here are the more significant other issues covered by this report. Sections III through V of the report provide details concerning these as well as other topics.

Supervisory and Management Practices

- ❖ There has been minimal supervisory or management review of work performed by CSAs, inspectors, and investigators.
- ❖ Annual performance appraisals of employees are, for all practical purposes, not completed. A previous attempt to complete them met with significant employee resistance. A more recent effort begun nearly six months ago has not produced any completed appraisals.

- ❖ There is no evidence of management or supervisory analysis of workload or work processes. Documentation of policies and procedures is sparse. Direction and control have been exercised principally by word of mouth.

CONCLUSIONS AND RECOMMENDATIONS REGARDING SUPERVISORY AND MANAGEMENT PRACTICES

- ❑ Specific supervisory responsibilities and requirements should be defined to meet the types of needs cited here, including conducting case reviews and annual performance appraisals.
- ❑ On an immediate basis, the two Sacramento Office inspectors should report to a sworn supervisor because of the nature of their work.
- ❑ The DBC should identify all significant areas requiring documentation of policies and procedures, and schedule the completion of this activity over a phased period of time.

Workload Allocations and Processes

- ❖ The allocation of staffing and cases between the Sacramento and Tustin offices seems reasonable *if* all authorized positions were filled and *if* there were no limited-term restrictions on any of the positions. However, we have no way of determining whether the total staffing levels are appropriate.
- ❖ There appears to be a significant imbalance in the probation and inspection caseloads assigned to the Tustin Office versus what is assigned to the Sacramento office. The Sacramento Office has considerably fewer cases, performs less on-site work related to inspection follow-up and probation monitoring, and has much longer aging of its inspection cases. However, until recently, the same staffing was available in both offices.
- ❖ Numbers of pending cases and the aging of these cases are substantially disproportionate among the three CSAs, although case assignments are relatively equal, apparently reflecting significant differences in staff productivity levels. These differences should be assessed and addressed.
- ❖ As of June 30, 2002, the CSAs had 971 pending cases. Elsewhere in this report, we submit recommendations that will increase the CSA workload to some degree. Whether our recommendations are accepted or not, we are concerned about the adequacy of CSA staffing, which can affect the flow of complaints referred to consultants, investigators, and inspectors.
- ❖ Work processes are not uniform among personnel performing essentially the same jobs. This is not a major issue, but it can affect the time required to perform similar jobs. A case in point is the use of a contract service in the Southern California Region to obtain drug test samples from probationers (paid for by the probationers), while inspectors drive throughout the Northern California Region to perform the same function.

CONCLUSIONS AND RECOMMENDATIONS REGARDING WORKLOAD ALLOCATIONS AND PROCESSES

- ❑ The DBC's Enforcement Program Improvement Plan should include a specific component to develop a plan to complete a staffing analysis. The plan should require development of information necessary to make a reasonable determination of the number of needed peace officers, inspectors, CSAs, and key support staff. This will necessitate the establishment of consistent processes used by affected personnel, with exceptions limited to unique situations.
- ❑ The existing Northern California laboratory contract should be amended to enable provision of drug test sample collection services as is done currently in Southern California.
- ❑ One person in each region should be designated to supervise probation monitoring activity. Needs exist to provide oversight of this important program.

Case Processing Delays

- ❖ Exceptional delays seem to be occurring at many different case processing steps, and may be particularly bad for certain types of cases. Potential causes may be a lack of concern about whether a case is processed or closed promptly, lack of cross training, lack of effective supervisory attention, poor productivity (as compared to peers), and lack of systematic "relief" assignments when people are not at work. The detailed report identifies most of the major processing steps and cites examples of how complaints are delayed at each point.
- ❖ There seems to be a general indifference toward the need to promptly process and conclude complaints that are received. Many complaints fail to receive clerical, CSA, inspector, or investigator attention on a timely basis. Whether a case is concluded this month or three months from now (or longer) is not a substantive concern in most instances, even when the closure only requires final documentation and internal filing. To some extent, this condition may have developed because no one has established reasonable objectives for completing various steps, and stressed the importance of achieving such objectives. Nevertheless, this seems to be a rather pervasive problem, albeit with some notable exceptions.
- ❖ Representatives of several special interest and advocacy groups expressed concerns about the extended timeframes needed by the DBC to perform complaint resolution and disciplinary functions. These extended timeframes make the complaint resolution process unnecessarily burdensome and costly to the complainant and the licensee, and also to the DBC. Additionally, the failure to provide for due process on a timely basis serves to undermine the credibility of the entire regulatory program.

CONCLUSIONS AND RECOMMENDATIONS REGARDING CASE PROCESSING DELAYS

- ❑ The overall area of case processing and aging should be a major focus of the DBC's improvement planning. A high priority should be placed on regularly reviewing aged cases and achieving a significant reduction in the amount of time needed to close complaints at each stage of the complaint handling process. Additionally, reasonable elapsed time objectives need to be established for the processing of complaints at each step. There also is a need to assess the extent to which a lack of cross training and a pre-planned approach to staffing "relief" affects case aging.
- ❑ An analysis should be completed regarding alternatives for decreasing the time required to obtain experts, and for managing more effectively the elapsed (calendar) time they spend reviewing and reporting on cases. Substantially higher rates of expert pay when testimony is required (e.g., \$200/hour) may help considerably. For example, the Medical Board pays its experts \$100/hour for case review and reporting, and \$200/hour for testimony.

Attorney General's Office Processes

- ❖ The DBC does not control the processing of cases within the AGO, nor does the AGO have full control over those cases. To explain:
 - ❑ Budget constraints and the hiring freeze have affected the AGO's ability to fully staff its authorized positions. This has led to delays in assigning deputy attorneys general (DAGs) to DBC and other licensing cases.
 - ❑ The DBC's start-and-stop budget decisions during FY2001/02 aggravated the situation by causing unnecessary work and necessitating the rescheduling of some hearings.
 - ❑ Due to the hiring freeze, the Office of Administrative Hearings is now scheduling Southern California hearings seven to eight months in the future due to a lack of adequate staff. This will substantially lengthen the resolution of all cases that proceed to a hearing.
- ❖ Despite the above constraints, the DBC can improve its involvement with the AGO, as suggested below.

CONCLUSIONS AND RECOMMENDATIONS REGARDING THE AGO'S PROCESSES

- ❑ The DBC needs to aggressively monitor all AGO cases, including calls to check on why cases are not moving through the process. Additionally, the DBC's Enforcement Coordinator needs to maintain summary level aging data on all cases, by major step in the AGO process.
- ❑ The "client needs to initiate discussion" (per AGO representatives) whenever there is a potential problem (e.g., delays in any stage of the AGO process, etc.). This type of discussion has not been initiated on a regular basis by DBC Enforcement Program staff.

- ❑ There needs to be a process in place whereby Enforcement Program supervisors make a reasoned assessment of multiple case situations as they start to become obvious. Decisions need to be made regarding the point at which action will be pursued with the AGO. Decisions as to whether to retain the early cases interminably should not be individualized at the investigator level, as they have been in many instances.
- ❑ The DBC has no way of determining the number of attorney-hours per case that are equivalent to specified budget reductions or additions. The criteria for the AGO's decisions in these areas are not defined and seem to be individualized at the DAG level in many instances. The process is vague and the DBC appears to have little control over the outcomes. In consultation with AGO staff, the DBC should develop strategies for more objectively determining anticipated AGO staffing requirements and expenditures.

Malpractice Settlements and Judgments

- ❖ Sections 800 through 806 Business and Professions (B&P) Code require that settlements and arbitration awards must be reported to the DBC when the amounts are over \$10,000. In practice, the DBC receives many reports of this type that are under \$10,000. Accurate data on the number of reports received each year are not available; however, it is believed that they total about 250 per year.
- ❖ Historically, and based only on anecdotal information, it appears that 90 percent of these cases have been "Closed, Insufficient Evidence" based solely on the brief (3 to 6 sentences) insurer's description of the alleged malpractice. Of the remaining 10 percent, we were told that probably no more than one out of ten were ever assigned to an investigator. The new Chief of Enforcement has instituted a new process that, with a recent group of cases, resulted in about 74 percent being closed on the initial report.
- ❖ Award amounts vary substantially, from a few thousand dollars to \$135,000 in a small sample of cases we reviewed. However, only "judgments" over \$10,000 are entered into the licensee's record that is available to the public. "Settlements" are *never entered* into the licensee's record that is available to the public, regardless of the amount. We have not yet determined whether current statutes permit public disclosure of this information.
- ❖ These reports are processed separately and reviewed first by the Chief of Enforcement or the Enforcement Supervisor to determine if they will be referred to a CSA to obtain records, depositions, etc. The criteria for pursuing cases has been, and continues to be, very subjective. Two people reviewing the same report may reach different conclusions as to the need for subsequent, more detailed investigation.

CONCLUSIONS AND RECOMMENDATIONS REGARDING MALPRACTICE SETTLEMENTS AND JUDGMENTS

- ❑ We are concerned that malpractice cases are not given sufficient priority primarily because the patient has not filed a complaint with the DBC. There are also issues related to inclusion of data on licensee records and legislative reporting. Although the number of reports is relatively small, there may be more sustainable evidence of negligent care in some of these cases than is available in a typical single complaint received directly from a patient (e.g., results of a peer review, depositions, etc.).
- ❑ We recommend that malpractice cases be processed consistent with established procedures for other complaints. There is no reason we can identify for the unique way these cases are handled. The new Chief of Enforcement has recently implemented this recommendation.
- ❑ We also recommend a thorough review of the processing, investigation, and disposition of reported malpractice settlements and awards, and the records related thereto. The new Chief of Enforcement has recently begun a review of malpractice case handling, record keeping, and reporting.

Other Records Issues

- ❖ Records retention policies regarding the purging of hard copy files are not fully documented. Moreover, the purging of “Without Merit” cases after one year may be premature. This is not sufficient time to hold these records.
- ❖ The current “priority codes” assigned to cases consists of a list of about 30 case classifications that no one actually uses to determine which case has the highest priority in terms of being worked.

CONCLUSIONS AND RECOMMENDATIONS REGARDING OTHER RECORDS ISSUES

- ❑ The DBC needs to review its policies and practices related to records retention (e.g., one-year purging of “Without Merit” cases).
- ❑ The DBC should develop a much simpler, more effective priority coding system.

Customer Relations

- ❖ The DBC does not conduct annual customer satisfaction surveys, or even keep a log or file of complaints that it has received regarding its complaint handling and investigation services. Consequently, there was little credible information available that we could use to determine the level of customer satisfaction with Enforcement Program services.

CONCLUSIONS AND RECOMMENDATIONS REGARDING CUSTOMER RELATIONS

- ❑ The DBC should immediately disseminate a customer satisfaction survey for all complaints *closed* during FY2001/02. Customer satisfaction surveys also should be disseminated on a continuous basis in conjunction with the issuance of case closing letters.
- ❑ The DBC should establish formal procedures for documentation of complaints alleging unsatisfactory service provided by Enforcement Program staff.

Disclosure Policies

- ❖ The DBC has no written policy governing the information that may be provided to the public regarding licensees. Requests for such information are typically routed to one or two people who, generally, limit the disclosure to complaints involving Board disciplinary action and reports of malpractice “judgments” over \$10,000.
- ❖ A draft DCA memorandum on the subject of “Minimum Standards for Consumer Complaint Disclosure” (June 5, 2002) is intended to apply broadly to all licensing entities. It states that consumer complaint information shall be disclosed under the following conditions:
 - ❑ A substantiated consumer transaction has occurred
 - ❑ The business (dentist) has had an opportunity to respond to the complaint
 - ❑ A probable violation of law has occurred or there is a risk of public harm
 - ❑ The complaint will be referred for legal action (i.e., to the AGO or a DA).

Certain exceptions to the above statement are noted in the memo.

- ❖ Adoption of these and other guidelines contained in the draft memo could substantially alter DBC disclosure practices. For example, they may permit disclosure of malpractice settlements and most, if not all, cases referred to the AGO.

CONCLUSIONS AND RECOMMENDATIONS REGARDING DISCLOSURE POLICIES

- ❑ The foregoing comments reflect the results of a very preliminary review of disclosure issues; a full analysis will require involvement of legal expertise. DBC staff will need to fully analyze disclosure-related policies and issues, perhaps with legal assistance from the DCA. This is a fairly important issue, at least in the minds of some consumer advocacy groups.

Proactive Enforcement

- ❖ For the most part, the DBC is not involved in proactive enforcement services, such as:
 - ❑ Unlicensed activity (except in Los Angeles County)
 - ❑ False, misleading, or otherwise prohibited advertising
 - ❑ Special outreach efforts for at-risk populations, perhaps in conjunction with Denti-Cal and selected social service agencies.
- ❖ Representatives of several of the special interest groups that we interviewed expressed concerns about the limited nature of the DBC's consumer and industry outreach and education efforts, and associated relationships to the effectiveness of the Enforcement Program. For example, the Enforcement Program is seen as having little, if any, presence in local communities. As a result, consumers and licensees are less likely to be aware of or report unlawful activities to the DBC. A consensus exists that the DBC needs to significantly improve its outreach, education, and other proactive enforcement-related activities.

CONCLUSIONS AND RECOMMENDATIONS RELATED TO PROACTIVE ENFORCEMENT

- ❖ The Enforcement Program may benefit from some proactive efforts. Alternative strategies should be evaluated. This assumes, of course, that hiring freeze exemptions are obtained for the existing vacant investigator positions; otherwise there will not be sufficient resources available to perform the additional work.

Drug Diversion Program

- ❖ The DBC operates a drug diversion program that is statutorily required. The contractor, Managed Health Network (MHN) in San Rafael, has had the contract since the program's inception more than 10 years ago. There are usually between 90 and 100 participants in the program, with many staying four or five years.
- ❖ The Diversion Program is not the subject of much discussion or concern within the DBC; the only improvement-oriented issues we noted while briefly reviewing this program are outlined below.
 - ❑ *Drug Tests for Probationers*—Some individuals are in the Diversion Program and on probation due to addiction. In these instances, biological sample testing is done separately under both programs.
 - ❑ *Access to Self-Referral Information*—Presently, if dentists or COMDA licensees refer themselves to the Drug Diversion Program on a self-referral basis, information regarding their participation is not readily available to CSAs, inspectors, or investigators who may be assigned subsequent complaints against them.

CONCLUSIONS AND RECOMMENDATIONS REGARDING THE DRUG DIVERSION PROGRAM

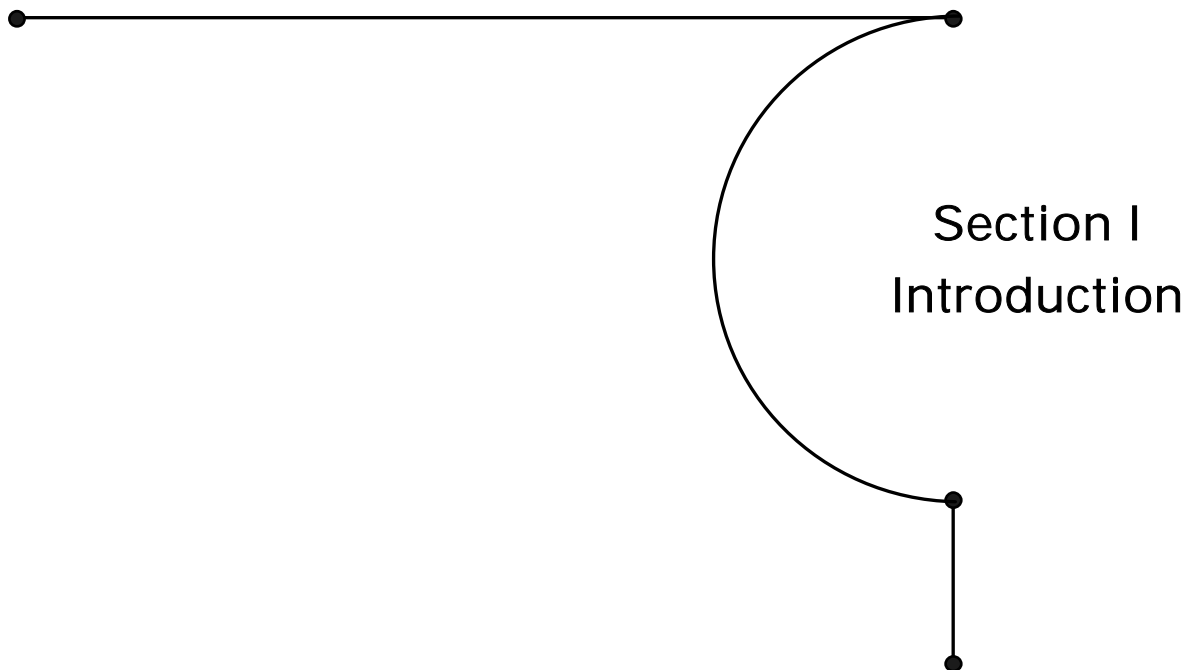
- ❑ When someone is being tested for drugs under both the diversion and probation programs, we recommend that only the diversion program testing be completed, and that the results be shared with the probation monitor. Implementation of this suggestion would not affect many participants (probably fewer than 25 to 30). However, it would conserve the time of DBC probation monitors who have to collect samples (in the Northern region) or arrange for their collection (in the Southern region).
- ❑ The DBC should attempt to devise a means of providing self-referral Diversion Program information to those handling subsequent complaints against licensees. If this cannot be done within the provisions of current statutes, a legislative amendment should be requested. About one-third of all program participants are self-referrals.
- ❑ Alternatives to the current Drug Diversion Program should possibly be considered in some cases. We understand that the treatment approach currently used is somewhat rigid, and not always aligned with the needs and circumstances of potential participants.

Allegations of Enforcement Bias

- ❖ A concern exists among some special interest and advocacy groups that the DBC has used its enforcement or disciplinary processes to differentially prosecute or protect a particular group of licensees. For example, it is alleged that the DBC's enforcement has focused on preserving the economic status quo in dentistry and the policies of the California Dental Association instead of on protecting consumers (e.g., by differentially targeting non-member "amalgam-free" dentists). Conversely, it is alleged that the DBC has acted against the interests of the California Dental Association by frequently disregarding an Administrative Law Judge's recommendation and imposing harsher disciplinary measures on current licensees, most of which are Association members. No analyses of either of these issues were completed as part of this initial assessment.

CONCLUSIONS AND RECOMMENDATIONS REGARDING ALLEGATIONS OF ENFORCEMENT BIAS

- ❑ DBC's management information systems do not provide most of the data needed to perform an assessment of this issue. A manual review of each disciplinary case would have to be completed, which may be difficult, time-consuming, and costly. Assessment of alternative approaches to address this issue will be performed as part of Phase II.



I. INTRODUCTION

This section of the report provides:

- ❖ General background information about the Dental Board of California (DBC).
- ❖ An overview of the objectives and scope of responsibility of the Enforcement Program Monitor's assignment
- ❖ A summary of our methodological approach and schedule for performing the initial assessment phase of the project, as well as a discussion of the primary focus of Phase II, i.e., development of an Enforcement Program Improvement Plan.

Subsequent sections of the report are organized as follows:

<i>Section</i>	<i>Title</i>
----------------	--------------

- | | |
|------|--|
| II. | - Overall Assessment of the Enforcement Program |
| III. | - Assessment of Specific Organization, Management, and Staffing Issues |
| IV. | - Assessment of Specific Operations, Records, and Cycle Time Issues |
| V. | - Assessment of Other Potential Issues |

Each of the above "assessment" sections contains analyses, initial conclusions, and recommendations. Recommendations are of two types:

- ❖ "Quick Hits" that can be implemented now without external approvals or additional budget resources
- ❖ Longer-range recommendations that will have to be formulated in more detail during the Phase II development of an Enforcement Program Improvement Plan.

A. Background

- ❖ The DBC was created in 1885 to regulate the practice of dentistry. In 1901, the Board promulgated its first regulations making it unlawful to practice dentistry without a license.
- ❖ During 1974, a Committee on Dental Auxiliaries (COMDA) was established under the jurisdiction of the Board to provide advice on the functions, required degree of supervision, and work settings of dental auxiliaries, including dental hygienists and dental assistants.
- ❖ Currently, the DBC regulates about 30,000 dentists and more than 40,000 other practitioners including registered dental hygienists (RDH), registered dental hygienists in extended functions (RDHEF), registered dental hygienists in alternate practice (RDHAP), registered dental assistants (RDA), and registered dental assistants in extended functions (RDAEF).
- ❖ The mission of the DBC is to protect California consumers through the examination and licensing of dental professionals and by the enforcement of the laws and standards of practice that govern dentistry in California. Recently enacted legislation (AB 269, Correa) provides that:

Protection of the public shall be the highest priority for the Dental Board in exercising its licensing, regulatory, and disciplinary functions. Wherever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

- ❖ Core responsibilities of the DBC include:
 - ❑ Preparing and administering licensing exams
 - ❑ Licensing qualified dental health care professionals
 - ❑ Monitoring compliance with applicable laws and regulations
 - ❑ Mediating and investigating complaints, and initiating enforcement and disciplinary proceedings, where appropriate
 - ❑ Providing rehabilitation services for licensees whose competency may be impaired due to the abuse of alcohol or other drugs
 - ❑ Providing information and education to consumers and licensees.
- ❖ The DBC's enforcement process generally begins with receipt of a complaint. Complaints are received from consumers, licensees, insurance companies, and other state and federal agencies. DBC analysts initially review the complaints to determine whether there is a violation of the Dental Practices Act. Dental consultants are utilized to review complaints that appear to involve quality of care issues. Complaints that are unable to be resolved through mediation during the initial review phase are referred for formal investigation. Where

appropriate, DBC's investigators work with the Attorney General's Office (AGO) to bring a legal case before an administrative law judge (ALJ) in order to take formal disciplinary action against the licensee, such as suspending or revoking the license. Finally, the ALJ's recommendation is submitted to the DBC's governing Board for approval, modification, or rejection.

- ❖ Authorized staffing for the DBC for FY2001/02 was 48.3 positions. Of these, 31 positions (65 percent) were assigned to the Enforcement Program. Additionally, the DBC was authorized to appoint a small number of part-time staff (e.g., student assistants, seasonal clerks, and retired annuitants). Total authorized staffing for the DBC has not changed materially since at least the mid-1990s.
- ❖ The DBC's facilities infrastructure currently consists of a headquarters office located in Sacramento and a small satellite enforcement office located in Tustin. Most staff are assigned to the Sacramento office which has primary responsibility for performing program administration, licensing, examination, and complaint intake and initial processing functions. Complaint investigations, dental office inspections, and probation monitoring functions are performed by staff assigned to both the Sacramento and Tustin offices. Additionally, one of the DBC's dental consultants who assists in reviewing quality of care complaints is assigned to the Tustin office.
- ❖ The operations of the DBC are entirely self-funded, primarily from the application, examination, and license fees that it collects. For FY2001/02, these and other DBC revenues are expected to exceed the DBC's total expenditures by several hundred thousand dollars.
- ❖ Authorized FY2001/02 funding for the DBC was approximately \$7.2 million. Of this, approximately \$5 million (70 percent) was utilized to fund Enforcement Program services.
- ❖ The Department of Consumer Affairs, in consultation with DBC staff, have projected a June 30, 2002, reserve fund balance of more than \$7.0 million. This is equivalent to a full year of operating expenses. However, pending legislation (AB 425, Oropeza), would loan \$5 million of the DBC's reserve funds to the General Fund during FY2002/03. The end of year reserve fund balance, adjusted for this anticipated loan, should still be more than \$2 million. This is equivalent to about four months of operating expenses.
- ❖ About 50 percent of the state's licensed dentists practice in the Board's Southern California Region (which includes Los Angeles, Orange, San Diego, Riverside, Bakersfield, Ventura, San Luis Obispo, Imperial, Inyo, and Mono Counties). About 40 percent of licensed dentists practice in the Board's Northern California Region. The remaining 10 percent are located outside the state.

- ❖ Since the mid-1990s, the DBC has been the subject of a number of third party reviews and audits. Among these are included:
 - ❑ Sunset reviews conducted by the Joint Legislative Sunset Review Committee (JLSRC) during CY1996 and CY2000
 - ❑ A program performance audit conducted by the California State Auditor during CY2000
 - ❑ A review of the DBC's need for sworn peace officers conducted by an independent consulting firm during CY2000
 - ❑ A program performance/transition audit conducted by the Department of Consumer Affairs' Internal Audit Office during CY2002.
- ❖ During CY2001, legislation was enacted that abolished the DBC's existing governing Board and concurrently reconstituted it on January 1, 2002 (SB 134, Figueroa). The reconstituted Board was vested with the same powers as its predecessor. Also, no changes were made in the statutory composition of the Board (8 dentists, 4 public members, 1 licensed dental hygienist, and 1 licensed dental assistant). However, other CY2001 legislation (AB 447, Firebaugh) did specify that of the 8 dentists, one shall be a member of the faculty of any California dental college, and one shall be a dentist practicing in a nonprofit community clinic. As a result of these events, for the first five months of CY2002, the Board did not have a sufficient number of members appointed to enable it to meet in order to elect officers, organize committees, process disciplinary actions, and otherwise conduct business.
- ❖ Concurrently, during the first half of CY2002, the DBC operated with only one-half of its total complement of six authorized management and supervisory positions filled. The DBC's Executive Officer, Chief of Enforcement, and Tustin Office Supervising Investigator all separated from the DBC during December 2001. From January through mid-June 2002, the DBC's management team consisted of an Assistant Executive Officer, a Staff Services Manager I, and an Office Services Supervisor I. A new Chief of Enforcement and a new Tustin Office Supervising Investigator were not appointed until June 2002. In both cases, the positions were filled by one of the DBC's senior investigators, creating additional vacancies at the senior investigator level. A new Executive Officer has not yet been appointed.

B. Objectives and Scope of the Enforcement Program Monitor

- ❖ During CY2001, legislation was enacted that authorized the Director of the Department of Consumer Affairs to appoint a DBC Enforcement Program Monitor (SB 26, Figueroa). SB 26 provides that the Enforcement Program Monitor shall monitor and evaluate the dental disciplinary system and procedures, with specific concentration on improving the overall efficiency of the Enforcement Program. SB 26 specifies that the Enforcement Program Monitor's duties shall include:
 - ❑ Improving the quality and consistency of complaint processing and investigation, and reducing the time periods for each
 - ❑ Reducing any complaint backlog
 - ❑ Assuring consistency in the application of sanctions or discipline imposed on licensees.
- ❖ Additionally, SB 26 provides that the Enforcement Program Monitor's duties shall include assessments of the following areas:
 - ❑ The accurate and consistent implementation of the laws and rules affecting discipline
 - ❑ Staff concerns regarding disciplinary matters or procedures
 - ❑ Appropriate utilization of licensed professionals to investigate complaints
 - ❑ The DBC's cooperation with other governmental entities charged with enforcing related laws and regulations regarding dentists.
- ❖ Finally, SB 26 requires that the Enforcement Program Monitor submit an Initial Report of findings and conclusions to the Department of Consumer Affairs and the Legislature by September 1, 2002. Supplemental reports are required to be submitted every six months thereafter through March 1, 2004. The Enforcement Program Monitor is required to provide the Board with an opportunity to reply to any facts, findings, issues, or conclusions contained in the reports with which the Board may disagree, and to make the reports available to the public or the media.
- ❖ Following enactment of SB 26, the Department of Consumer Affairs and the DBC identified and arranged funding for Enforcement Program Monitor Services. This process was completed in late-November 2001. In January 2002, the Department of Consumer Affairs solicited proposals for Enforcement Program Monitor services. NewPoint Group, Inc. submitted its proposal on January 29, 2002, and was subsequently selected to serve as the Department's DBC Enforcement Program Monitor. A contract to provide the services was approved on April 19, 2002.

C. Methodological Approach and Schedule

- ❖ The initial focus of the project was on conducting an overall assessment of the DBC's Enforcement Program and preparing an Initial Report of findings and conclusions. Project start-up activities were not initiated until late April 2002. As a result, only about two months of calendar time was available to conduct the initial assessment (May and June), leaving just one month (July) to prepare a draft Initial Report for submission to the Department and the Board, and one month (August) for finalization of the Initial Report for submission to the Department of Consumer Affairs and the Legislature.
- ❖ The limited, two-month timeframe available to conduct the initial assessment required that the analysis be performed at a higher, more general level, with the expectation that additional analyses will be performed, where appropriate, during subsequent phases of the project. Consistent with the provisions of SB 26, our initial assessment efforts focused primarily on analysis of the overall efficiency of the Enforcement Program, the quality and consistency of complaint processing and investigation, timeframes needed for complaint handling and investigation, complaint backlogs, and other related organizational and operational problems, issues, and concerns.
- ❖ Specific tasks performed as part of Phase I included:
 - ❑ Collecting and reviewing available background documentation related to the Enforcement Program, including documentation related to:
 - Organizational structures and staffing
 - Complaint workload and processing times
 - Authorized budget and operating costs.
 - ❑ Collecting and reviewing other relevant background documentation, including strategic plans, policy and procedure manuals, prior reports, documents produced in connection with the DBC's sunset review hearings, DBC meeting materials accumulated by the University of San Diego Center for Public Interest Law, and legislation enacted since the mid-1990s affecting the DBC's authorized level of peace officer staffing
 - ❑ Interviewing key executives at the Department of Consumer Affairs and at the DBC, key legislative consultants (i.e., Ms. Robin Hartley and Mr. Jay DeFuria), and Department of Consumer Affairs and DBC managers and staff involved in providing administrative support services to the Enforcement Program
 - ❑ Interviewing nearly all of the Enforcement Program's managers, supervisors, and staff
 - ❑ Interviewing representatives of external interest groups (i.e., the California Dental Association, the California Association of Oral & Maxillofacial Surgeons, the California Dental Hygienist Association, the California Dental Assistant Association, the Occupational Safety and

- Health Administration, the USD Center for Public Interest Law, and Consumers for Dental Choice)
- ❑ Compiling, analyzing, and summarizing complaint workload, backlog, and processing time data, staffing data, and budget and expenditure data profiling the DBC's programs and operations from the mid-1990s through FY2001/02.
 - ❖ As part of the Initial Assessment, we identified several issues that have been the focus of considerable attention in recent years, but were determined to be outside of the scope of our initial assessment effort. Among these are included the following:
 - ❑ Problems related to oral and maxillofacial surgeon scope of practice restrictions
 - ❑ Problems related to the development and subsequent revision of the *Dental Materials Fact Sheet*, the quality and utility of the current *Fact Sheet*, and requirements for discussion with patients of options regarding restorative materials
 - ❑ Problems related to the DBC's development of a position statement on the adequacy of existing laws governing activities of Dental Management Service Organizations (DMSOs) and Independent Practice Associations (IPAs)
 - ❑ Problems related to the administration of general anesthesia and oral conscious sedation in dental offices
 - ❑ Problems related to delegation of duties by dentists to dental auxiliaries, particularly unlicensed dental assistants.
 - ❖ Other significant issues that have been the focus of considerable attention in recent years, and were considered to be within the scope of our initial assessment effort included the following:
 - ❑ The DBC's utilization of peace officers to perform complaint investigations
 - ❑ Extended processing times needed by the DBC for case investigations, legal actions referred to the Attorney General's Office, and concluding disciplinary proceedings
 - ❑ Development of a time measurement system for Enforcement Program staff
 - ❑ High levels of dissatisfaction reported in a recently completed survey of complainants.
 - ❖ Our approach to performing the project provides for preparation of a detailed work plan for the second phase of the project, based on findings that emerge from the Phase I Initial Assessment. Phase II efforts are expected to focus on performing analyses of selected needs, issues, and concerns that were not able

to be fully assessed during Phase I. Phase II efforts also are expected to include providing assistance with development of an Enforcement Program Improvement Plan.



Section II
Overall
Assessment of
the Enforcement
Program



II. OVERALL ASSESSMENT OF THE ENFORCEMENT PROGRAM

This section of the report provides broad-based assessments of the Dental Board of California's:

- ❖ Organization and staffing
- ❖ Overall operational performance
- ❖ Financial management.

The analyses that we conducted in each of these key areas highlight several fundamental program management needs that should be immediately addressed to provide a foundation for future improvements in program performance. Specific recommendations related to these needs also are provided.

A. Organization and Staffing

Current Organization and Staffing

- ❖ Substantial difficulty was experienced attempting to reconstruct and perform analyses of the DBC's historical allocations of staffing resources to specific Enforcement Program functions. Ultimately, we were able to obtain position rosters from the Department of Consumer Affairs that could be used for this purpose, but the amount of time needed to compile staffing allocation data from these detailed records was much greater than might otherwise have been the case had the DBC consistently maintained this type of basic program management information.
- ❖ **Exhibit II-1**, on the next page, profiles the DBC's allocation of authorized positions to the Enforcement Program during each of the past six fiscal years. As shown by Exhibit II-1, for the past six years, the Enforcement Program has consistently been allocated either 30 or 31 positions of the DBC's total 48 authorized positions. Also, the allocation of authorized Enforcement Program positions to management, support, and enforcement functions has been stable throughout this period. However, during this period there has been:
 - ❑ A decrease in the number of sworn peace officer management positions from 3 positions to 2
 - ❑ A decrease in the number of sworn peace officer investigator/senior investigator positions from 14 positions to 12
 - ❑ An increase in the number of non-sworn inspector positions from 2 positions to 4.
- ❖ **Exhibit II-2**, following Exhibit II-1, illustrates the current organization of DBC staff, including staff assigned to the Enforcement Program. As shown by Exhibit II-2, one of the DBC's sworn peace officer management positions (a Supervising Investigator II) serves as Chief of Enforcement and directly supervises:
 - ❑ Two full-time dental consultants, plus one part-time retired annuitant dental consultant (Note: One of the full-time dental consultant positions is assigned to the Tustin Office)
 - ❑ Four senior investigator positions assigned to the Sacramento Office (one of which is currently vacant)
 - ❑ One Sacramento-based non-sworn Enforcement Supervisor (a Staff Services Manager I) who supervises the following 11 positions:
 - 3 staff services analyst positions that are responsible for handling all incoming complaints and are referred to as consumer services analysts (CSAs)
 - 1 consumer assistance technician position that provides direct support to the complaint handling process
 - 2 inspector positions
 - 5 clerical and program analyst positions that provide various Enforcement Program-related support services

EXHIBIT II-1

Dental Board of California
Authorized Staffing ^{1a/}

Business Unit / Classification	Peace Officer Status	Fiscal Year						Comments
		1996/97	1997/98	1998/99	1999/00 ^{1b/}	2000/01 ^{1b/}	2001/02	
Executive Office	Executive Officer	1.0	1.0	1.0	1.0	1.0	1.0	
	Assistant Executive Officer	1.0	1.0	1.0	1.0	1.0	1.0	
	Executive Secretary I						1.0	
	Management Services Technician	Reclassified From OT ==>			Reclassified From MST ==>			
	Office Technician	2.0	2.0	<== Reclass To MST	2.0	2.0	1.0	
	Total - Executive Office	4.0	4.0	4.0	4.0	4.0	4.0	
Enforcement	Supervising Investigator II	1.0	1.0	1.0	1.0	1.0	1.0	
	Supervising Investigator I	2.0	2.0	1.5	1.0	1.0	1.0	
	Staff Services Manager I			0.5	1.0	1.0	1.0	
	Senior Investigator	12.0	12.0	13.0	12.0	9.0	8.0	Current Position Reclassified from Supervising Investigator I (01/01/99).
	Investigator	2.0	2.0			3.0	4.0	
	Investigator Assistant	Reclassified From OA II ==>		1.0	0.5	<== Reclassified To Inspector		
	Inspector I/II	2.0	2.0	2.0	3.5	4.0	4.0	
	Consumer Services Representative	3.0	3.0	3.0		<== Reclassified To SSA		1 Current Position Reclassified from Senior Investigator.
	Staff Services Analyst (CSRs)							
	Dental Consultant	2.0	2.0	2.0	3.0	3.0	3.0	
	Consumer Assistance Technician	1.0	1.0	1.0	2.0	2.0	2.0	
	Associate Government Program Analyst	1.0	1.0	1.0	1.0	2.0	2.0	1 Current Position Reclassified from Senior Investigator.
Support	Staff Services Analyst	Reclassified From Management Services Technician ==>				1.0	1.0	
	Management Services Technician	1.0	1.0	1.0	1.0	<== Reclassified to SSA		
	Office Technician	2.0	2.0	2.0	2.0	2.0	2.0	
	Office Assistant II	2.0	2.0	1.0	1.0	1.0	1.0	Retired Annuitant Used for Tustin Office Support (FY1998/99 - Current).
	Total - Enforcement	31.0	31.0	30.0	30.0	31.0	31.0	
Licensing and Administration	Associate Government Program Analyst	2.0	2.0	3.8	3.8	1.8	1.8	
	Staff Services Analyst	1.8	1.8	1.0	1.0	2.0	2.0	
	Information Systems Analyst	1.0	1.0	1.0	1.0	1.0	1.0	
	Management Services Technician			1.0	2.0	1.0	2.0	
	Office Services Supervisor II	1.0	1.0	1.0	1.0		1.0	
	Office Technician	7.0	7.0	5.0	5.0	5.0	2.0	
	Office Assistant			1.0	1.0	2.5	3.5	
	Total - Licensing and Administration	12.8	12.8	13.8	14.8	13.3	13.3	
Totals		47.8	47.8	47.8	48.8	48.3	48.3	

^{1a/} Excludes student assistants, seasonal clerks, and retired annuitants.

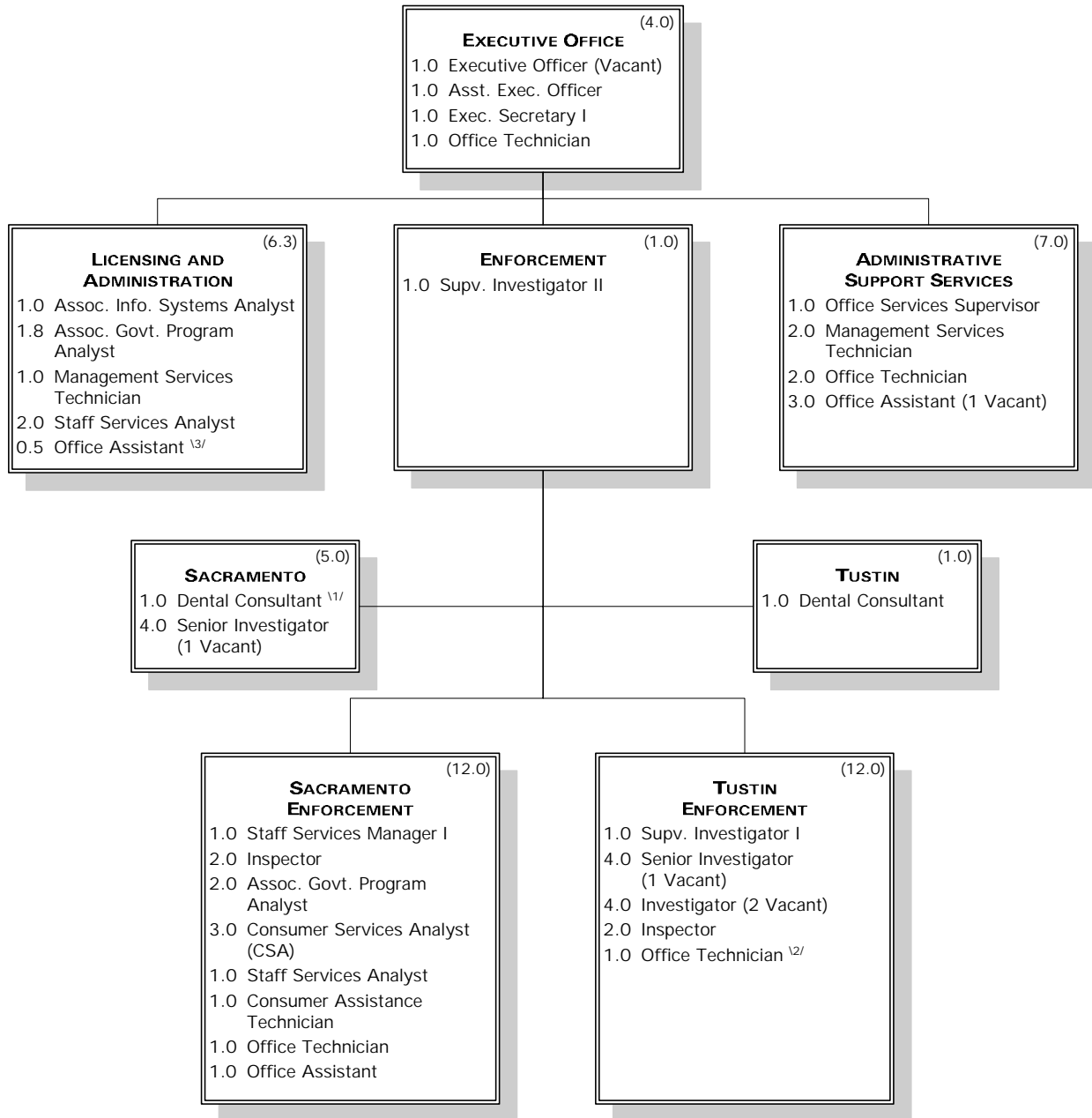
^{1b/} One additional MST position was authorized effective 7/1/99 (Oral Sedation). Subsequently, reduced to 0.5 positions effective 7/1/00.

EXHIBIT II-2

Dental Board of California – July 2002

Total Authorized Positions = 48.3, Excluding Blankets

Total Authorized Enforcement Program Positions = 31.0, Excluding Blankets



^{\1/} Currently, a retired annuitant dental consultant is also being utilized on a part-time basis.

^{\2/} Currently, a retired annuitant office assistant is also being utilized on a part-time basis.

^{\3/} Currently, a retired annuitant is also being utilized on a part-time basis.

- ❑ The Tustin Office Supervising Investigator, also a sworn peace officer, who supervises the following 12 positions:
 - 8 investigator or senior investigator positions (Note: 3 of these positions are currently vacant, and 2 of the 5 filled positions are limited-term peace officer appointments)
 - 2 inspector positions
 - 1 clerical support staff position, plus a part-time retired annuitant office assistant.
- ❖ During FY1998/99, in response the Legislature's concerns related to the use of sworn peace officer positions to perform complaint investigations, the DBC initiated a series of Enforcement Program position reclassifications that have:
 - ❑ Diluted the Enforcement Program's core management and investigative capabilities
 - ❑ Reduced the Program's flexibility to adjust to variability in workloads and staffing
 - ❑ Created an operational environment where sufficient numbers of equivalently classified and trained staff are not available to sustain day-to-day Enforcement Program operations when absences, vacations, or turnover occurs.

Recent Staffing-Related Legislation and Studies

- ❖ It is our understanding that the DBC has been conducting its own complaint investigations for more than 20 years and that, like the Medical Board and the Department of Consumer Affairs' Division of Investigations, it has used sworn peace officers to perform this function for that entire period. During the past five years, several bills have been enacted involving the DBC's continued use of sworn peace officers, as follows:
 - ❑ **SB 826 (Green)** – When SB 826 was enacted during 1997, the DBC had 17 investigator series positions at the supervising, senior, and investigator levels. SB 826 limited the number of appointments of sworn peace officers that could be made to these positions to seven, and would have required the transfer of any surplus sworn peace officers to another agency by July 1, 1999. However, it appears that this bill did not affect the DBC's budgeted number of authorized investigator series positions (17). Rather, it only limited the number of appointments that could be made of sworn peace officers to those positions. Thus, presumably, had the bill taken effect, the positions could have been filled with non-sworn investigators (or investigative assistants) who might have been able to perform some, but not all, of the functions previously performed by the sworn investigators that they replaced.

Separately, SB 826 also required that the DBC conduct a study of the duties of its investigators and submit a written report documenting

findings to the Legislature by May 1, 1998. This report was submitted to the Legislature on May 4, 1998. The report concluded that:

- The DBC was justified in using peace officers to perform complaint investigations, and
- A reduction in sworn positions from 17 to 7 would have significant adverse impacts on the Enforcement Program.

During the latter part of FY1998/99 and the early part of FY1999/00, some of the DBC's investigators accepted other jobs and separated from the agency, leaving the DBC with less than a full complement of investigative staff. Some of the staff turnover may have been precipitated by uncertainties associated with enactment of SB 826.

- ❑ **AB 900 (Alquist)** – AB 900 was enacted during October 1999 as an urgency statute, and partially reversed the provisions of SB 826. AB 900 increased the number of appointments of sworn peace officers that could be made on a permanent basis from 7 to 10. Additionally, AB 900 permitted 7 other appointments of sworn peace officers to be made on a limited-term basis (through July 1, 2002). Enactment of AB 900 alleviated needs for the DBC to transfer out any surplus peace officers that it may have had at the time. As with SB 826, it appears that this legislation did not affect the DBC's budgeted number of authorized investigator series positions (which already had been reduced by internally initiated reclassifications to only 14 positions). We have been told, anecdotally, that for a period of time from July 1, 1999, through enactment of AB 900 several months later, that a few of the DBC's investigators may have turned in their weapons and badges, and restricted their activities to those that they could perform without the sworn peace officer credential.

Separately, AB 900 required that the DBC contract with an outside entity to conduct a study to examine the DBC's needs for sworn peace officers. The study was subsequently performed by an independent consulting firm. Based on an analysis of activities performed by the DBC's investigators, the consultants concluded that not all of the DBC's investigators needed to be sworn peace officers. However, the consultant was unable to quantify the DBC's total investigator staffing needs, or the number of investigator positions that needed to be sworn peace officers. To determine the number of sworn peace officer positions needed, the consultant recommended that the DBC develop and implement an activity-based time-keeping system. Subsequently, DBC staff identified and assessed alternative strategies for capturing time-by-activity information. However, the DBC has not yet fully implemented a time-keeping system of this type.

- ❑ **SB 826 (Margett)** – SB 826 was enacted during 2001. The bill extended the term of the 7 previously authorized limited-term sworn peace officer appointments by 18 months from July 1, 2002, to January 1, 2004. Existing statutory provisions authorizing the appointment of 10 sworn

peace officers on a permanent basis were not affected. Since the DBC at this time had a total of only 14 authorized investigator series positions, the statutory provisions relating to limited-term sworn peace officer appointments effectively only applied to 4 of the DBC's investigator series positions. This is still the case currently.

Separately, SB 826 required that the DBC contract for a follow-up to the initial study that was made of the DBC's need for sworn peace officers. The bill required that a report documenting results of the study be submitted to the Legislature by August 1, 2002. The DBC has contracted with the consulting firm that performed the initial study to also perform this follow-up study, but has deferred start-up of the project pending enactment of legislation that would extend the timeframe for completion of the study, or eliminate the requirement to perform the study altogether.

Implications of Statewide Hiring Freeze

- ❖ The DBC is currently subject to the existing statewide freeze on hiring. Although the DBC obtained an exemption from the hiring freeze that permitted it to appoint existing personnel to the previously vacant Chief of Enforcement and Tustin Office Supervising Investigator positions, no request was made for an exemption to concurrently backfill the positions that would become vacant as a result of making these appointments. Also, no request was made to fill any other positions that were already vacant.
- ❖ As a result of the DBC's recent promotion of two of its senior investigators, it now has 8 filled and 4 vacant investigator series positions. This is 6 fewer filled investigator positions than the DBC had during the mid-1990s. The newly appointed Chief of Enforcement recently submitted a request for an exemption from the hiring freeze so that vacant investigator positions can be filled. However, there is a long lead time and considerable uncertainty associated with obtaining approval of such a request. Furthermore, even if the DBC obtains approval of its exemption request, additional calendar time will be needed to recruit and train the new investigators.
- ❖ The statewide hiring freeze is probably one of the most critical issues currently facing the DBC in terms of maintaining a credible Enforcement Program, yet this issue has received little or no attention to date. A variety of adverse impacts on Enforcement Program operations and performance are likely to surface during the current fiscal year as a result of continued high position vacancy rates. It is unreasonable to expect that the DBC's small pool of 8 investigators can effectively provide needed Enforcement Program services on a statewide basis. It is even more unreasonable to expect that these staff can improve service levels or provide other new services that consumers or licensees need (e.g., outreach, education, proactive enforcement, etc.).

Conclusions and Recommendations

- ❑ The DBC needs to immediately develop a specific plan to obtain broad-based sponsorship and support for approval of a request to be exempted from the hiring freeze so that it can fill currently vacant investigator series positions. The DBC should work closely with the Department of Consumer Affairs in presenting the request to oversight authorities and control agencies. A high priority needs to be placed on this initiative, and the exemption request needs to be submitted for approval as quickly as practicable.
- ❑ The DBC also needs to submit a request to be exempted from the hiring freeze so that it can convert two currently filled investigator positions from a limited-term to a permanent peace officer status. Governing statutes provide authority to appoint up to ten peace officers on a permanent status basis. Currently, the DBC has only eight filled peace officer positions with a permanent appointment status.

B. Overall Operational Performance

Data Constraints

- ❖ Our capability to perform this initial assessment of the DBC's Enforcement Program operations was adversely impacted not only by the limited amount of calendar time available to conduct the assessment, but also by:
 - ❑ The poor quality of statistical data pertaining to Enforcement Program operations that has been produced since at least the mid-1990s, and routinely provided to the Board, the Department of Consumer Affairs, the JLSRC, and the public.
 - ❑ The poor quality of statistical data pertaining to Enforcement Program operations that was provided to us in response to specific requests that we made for data that was needed to conduct the initial assessment.

We spent a considerable amount of time compiling and analyzing DBC statistical data only to determine that the data provided was largely useless. It appears that the quality of data produced by the DBC's management information systems is an area that has been neglected for an extended period of time. Ultimately, we were able to obtain some statistical data profiling the DBC's FY2001/02 Enforcement Program operations. However, any effort to reconstruct historical data would probably be fruitless, which necessarily limits the types of analyses that can be performed. Also, data provided related to case aging are believed to be reasonably reliable at an aggregate level, but we noted that in some areas the data were not fully consistent with other available information. We were not able to reconcile these differences. Finally, data related to the Board's disciplinary actions was not sufficiently complete for us to perform any analyses related to the discipline phase of the enforcement process.

- ❖ At this time we are able to provide only a limited amount of high-level statistical data that can be used to profile the DBC's complaint workload and workflows. The new Chief of Enforcement, in cooperation with technical specialists from the Department of Consumer Affairs' Office of Information Services, has begun updating and customizing the programs used by the DBC to enable ongoing production of a full set of valid and reliable Enforcement Program statistical data. In the interim, the following information has been provided for FY2001/02. We have been told, anecdotally, that FY2001/02 complaint workload and workflows were similar to levels experienced during the past several years.

Complaints Received

- ❖ The DBC received 3,178 complaints during the year.

Complaint Unit Closures and Referrals

- ❖ 2,453 complaints were closed in the Complaint Unit without referral for either inspection or investigation. This is equivalent to 75 percent of all complaint closures and referrals. The DBC's new Chief of Enforcement anticipates that this percentage will decrease during FY2002/03 reflecting a renewed commitment to refer complaints for investigation wherever justified.
- ❖ 556 complaints were referred for investigation (17 percent of total closures and referrals). Of these, 512 involved dentists and 44 involved auxiliaries. Of the total number of complaints referred for investigation, 39 percent were assigned to Northern Region investigators, and 61 percent were assigned to Southern Region Investigators.
- ❖ 259 complaints were referred for inspection (8 percent of total closures and referrals), including 74 (29 percent) referred to Northern Region inspectors and 185 (71 percent) referred to Southern Region inspectors.
- ❖ A total of 3,268 complaints were closed by the Complaint Unit or referred for either investigation or inspection. This was 90 more complaints than what were received during the year. However, a portion of this difference may be the result of referral of complaints back to the Complaint Unit after they are referred for investigation. On a per position basis, each of the Complaint Unit's 3 CSAs closed or referred 1,089 complaints during the year. The actual number of complaints closed or referred by each of the CSAs varied significantly from this average.
- ❖ As a part of the initial complaint handling process, complaints involving quality of care are first referred to and reviewed by dental consultants. 1,490 complaints were referred to the dental consultants during FY2001/02. The dental consultants completed 1,297 reviews. This data suggests that, even with the DBC's retention of a part-time retired annuitant dental consultant during the year, these personnel were not able to keep pace with the flow of new complaint assignments.
- ❖ On average, about 2½ months (74 days) was needed during FY2001/02 to process complaints that were not closed by the Complaint Unit and were referred for investigation. Most of these complaints were handled in less than 3 months (69 percent) and very few took longer than a year. In contrast, an average of about 5 months (150 days) was needed by the Complaint Unit to handle complaints that were closed without referral for an investigation. Nearly 50 percent of these complaints took longer than 6 months to process, and about 23 percent of these complaints took longer than a year to process.

Complaints Pending in the Complaint Unit

- ❖ As of June 30, 2002, there were 971 complaints pending in the Complaint Unit, including 325 complaints pending review by a dental consultant.

Complaint Investigations

- ❖ 510 complaints were assigned to investigators. This is 49 fewer complaints than were referred for investigation. It is not unusual for the Enforcement Program's managers (or staff) to refer some complaints back to the Complaint Unit that they believe don't need to be investigated. With a full complement of 12 filled investigator series positions, each investigator would need to complete about 42 investigations per year to keep up with these assignments. With 4 currently vacant investigator series positions, each investigator will have to complete about 64 investigations per year (52 percent more) to keep up with this level of assignments. During the past fiscal year, none of the DBC's investigators completed as many as 64 investigations.
- ❖ 462 complaints were closed following investigation. This is 48 fewer than the number assigned. The data suggests that existing management and/or staffing capabilities were not sufficient to keep up with the flow of new assignments, and prevent backlogs from accumulating.
- ❖ On average, about 10 months was needed during FY2001/02 to investigate complaints that were closed, in addition to the 2½ month average timeframe needed to initially process complaints that are referred to investigations. Thus, on average, the total elapsed time from initial receipt to closure for complaints referred for investigation is more than a year. Additionally, for all complaints closed following investigation, nearly one-half (about 47 percent) took longer than a year to process, and more than 15 percent took longer than 2 years (including elapsed time for initial complaint handling).
- ❖ 118 complaints were referred to the AGO following investigation. This is equivalent to about 26 percent of all complaint closures. Twenty-two complaints were referred to local DAs, a portion of which may have been dual referrals.

Complaints Pending in the Investigations Unit

- ❖ As of June 30, 2002, there were 432 complaints pending in the Investigations Unit. This is equivalent to about 54 complaints for each currently filled investigator position, and is substantially more than the average number of complaints closed per investigator during the past year. This data suggests that newly assigned complaint investigations are likely to be delayed during the next fiscal year due to the presence of relatively high caseloads among the DBC's existing workforce of 8 investigators. If the DBC had a full complement of 12 investigators, each investigator would have a much more manageable assigned caseload of only about 36 complaints.

Complaint Inspections

- ❖ 259 complaints were assigned to inspectors. This is equivalent to about 65 inspections per inspector position per year if the workload was evenly distributed between the Northern and Southern Regions, which it is not.
- ❖ Complaints assigned for inspection often times require an initial inspection and one or more follow-up inspections to verify compliance. The total number of inspections completed during FY2001/02 could not be determined. We also were not able to determine the total number of complaints closed following assignment to inspectors.
- ❖ Outcomes resulting from complaint inspections are listed below (Note: Some outcomes may overlap due to the occurrence of multiple inspections per complaint):
 - ❑ 85 Warnings Issued
 - ❑ 56 Citations Issued
 - ❑ 174 Compliance Verified
 - ❑ 51 No Violation Found
 - ❑ 5 Referrals to Investigation
 - ❑ 6 Out of Business.

Conclusions and Recommendations

- ❑ The above statistical data suggests that complainants are likely to experience extensive delays in the handling of complaints that they submit to the DBC. Additionally, as a result of the high level of investigator position vacancies that currently exists, the data suggests that the level of service provided to complainants is likely to get worse before it gets better. If additional backlogs accumulate, this will further contribute to staff workloads and adversely impact morale and productivity. For example, older complaints generally require more time to investigate. Once backlogs accumulate, they can become difficult to eliminate due to the lead times associated with (1) obtaining authorizations for additional staffing resources, and (2) recruiting and training new staff, if authorized.
- ❑ The DBC's Chief of Enforcement, with assistance from the Department of Consumer Affairs' Office of Information Services, should continue the process of updating and customizing the programs used by the DBC for statistical reporting. Additionally, efforts should be made to identify and activate any additional statistical reports that can be produced from the existing complaint tracking system that would help in managing the Enforcement Program and monitoring program performance. Finally, updated statistical reports should be provided to the Board and others, as appropriate, on at least a quarterly basis.
- ❑ Specific recommendations addressing case aging issues are provided in Section IV.

C. Financial Management

Data Constraints

- ❖ Substantial difficulty was experienced attempting to reconstruct and perform analyses of the DBC's Enforcement Program budget and expenditure history. The DBC's financial management reports are prepared in cooperation with the Department of Consumer Affairs' Budget Office staff. However, there are gaps in the knowledge of staff involved in preparing the reports at both organizations, resulting in the generation of financial data that is often times incorrect, incomplete, or misleading. Additionally, it is difficult to obtain adequate explanations as to why certain costs have fluctuated by large amounts from one year to the next. Ultimately, responsibility rests with the DBC to assure that the information presented in its financial reports is complete and correct, and annotated where needed to explain any unusual variances. As with the DBC's statistical information, this too appears to be an area that has been neglected by management for an extended period of time.

Financial Management Review

- ❖ **Exhibit II-3**, on the next page, summarizes the DBC's expenditures for each of the past six years. Also shown is each year's total authorized budget, and the amount of each year's surplus. As shown by Exhibit II-3:
 - ❑ From FY1996/97 through FY1998/99, the DBC's actual expenditures increased marginally from about \$5.5 million to about \$5.75 million. Overall, the DBC's cost structure was very stable during this period, with significant fluctuations limited to just two areas:
 - Y2K-related services and associated equipment replacements
 - Charge-backs from the AGO.
 - In FY1997/98, the DBC under-spent its authorized budget by more than \$300,000. In FY1996/97 and FY1998/99, the DBC under-spent its authorized budget by about \$100,000 to \$150,000.
 - ❑ In FY1999/00, the DBC's authorized budget increased by about \$550,000 to about \$6.4 million. Actual expenditures for FY1999/00 increased by about \$350,000 to \$6.1 million. A number of different line items contributed to this cost increase. Explanations of the causes of these costs increases were not obtained. In FY1999/00, the DBC again under-spent its authorized budget by about \$300,000.
 - ❑ In FY2000/01, the DBC's authorized budget increased marginally to about \$6.5 million. Actual expenditures for FY2000/01 decreased by about \$200,000 to about \$5.9 million. As a result, the DBC under-spent its authorized budget by about \$637,000, representing nearly 10 percent of the total budgeted amount.

EXHIBIT II-3

Summary of Expenditures

Category		FY1996/97	FY1997/98	FY1998/99	FY1999/00	FY2000/01	FY2001/02 (Estimated)
Personnel Services							
Salaries & Wages		\$1,850,144	\$1,816,613	\$1,866,346	\$2,010,692	\$2,127,990	\$2,256,182
Expert Examiners		52,300	46,900	10,403	54,413	See Subject Matter Expert	
Physical Fitness/Merit Salary Adjustment		6,465	6,525	6,890	5,669	5,466	7,644
Seasonals, Students, & Retired Annuitants ¹		36,621	22,999	23,753	48,291	49,283	112,343
Overtime		13,955	19,192	20,772	39,307	61,133	70,000
Exam Proctors		61,008	60,810	61,776	38,359	64,668	65,000
Board Members		20,300	22,700	23,500	20,400	15,300	20,000
Committee Members		62,400	62,800	86,665	104,600	45,200	12,000
Staff Benefits ²		535,329	541,417	479,813	410,125	402,548	569,794
Total - Personnel Services		\$2,638,522	\$2,599,956	\$2,579,918	\$2,731,856	\$2,771,588	\$3,112,963
Operating Expenses and Equipment							
External C&P Service Contracts ³		\$163,645	\$145,732	\$130,362	\$311,461	\$256,084	\$380,000
Printing, Communications, and Postage ⁴		167,220	165,529	166,654	200,393	171,860	310,566
Travel		142,824	174,070	158,183	229,436	133,101	180,161
Facilities ⁵		171,855	164,403	160,946	178,426	158,403	173,000
Departmental C&P Service Contracts ⁶		10,408	31,608	84,743	1,350	2,970	115,025
General and Other Expenses		103,371	78,807	79,500	109,540	74,572	101,036
Fingerprint Reports		55,584	60,872	68,878	72,436	54,488	53,000
Vehicle Operations		22,147	25,313	28,512	32,448	32,060	32,000
Data Center		22,860	25,896	26,810	19,768	26,673	27,000
Minor Equipment ⁷		0	0	49,194	8,718	15,307	5,000
Training		5,010	7,668	5,679	6,514	6,240	4,500
Data Processing		48,175	6,620	26,931	15,519	1,744	3,000
Litigation, Including Bingham (FY2000/01)		3,754	5,335	0	0	260,666	1,500
Major Equipment (e.g., Copiers and Vehicles)		0	19,692	76,617	66,240	29,965	19,887
Year 2000 (Y2K) and E-Government Projects		Not Applicable		111,878	38,849	85,273	46,000
Exams	Site Rental ⁸	155,376	143,760	157,860	147,922	172,167	390,000
	Subject Matter Expert	See Expert Examiners and Committee Members				112,851	92,000
	Supplies & Freight	3,387	13,761	4,378	3,295	4,005	0
	National Exam Contract	51,980	63,980	59,275	Discontinued		
Legal Actions	Attorney General's Office ⁹	829,507	957,004	882,871	951,361	700,228	1,100,000
	Office of Administrative Hearings	237,570	269,724	279,994	280,227	122,223	150,000
	Evidence/Witness Fees	97,451	102,290	87,629	90,363	85,273	86,000
Pro Rata	Departmental Pro Rata	493,407	499,237	481,500	520,324	560,044	661,200
	State Pro Rata	156,993	111,464	116,707	121,275	161,974	184,213
Total Operating Expense & Equipment (OE&E)		\$2,942,524	\$3,072,764	\$3,245,100	\$3,405,865	\$3,228,171	\$4,115,088
Total Expenditures		\$5,581,047	\$5,672,720	\$5,825,018	\$6,137,721	\$5,999,759	\$7,228,051
Diversion Program and COMDA Reimbursements		(22,236)	(96,171)	(75,702)	(34,620)	(125,015)	(90,000)
Fingerprint Reports		(55,664)	(61,240)	(68,488)	(73,416)	(67,984)	(80,000)
BHFTI Reimbursement (Former Exec. Officer Salary)		Not Applicable					(31,872)
Net Total Expenditures		\$5,558,811	\$5,576,549	\$5,749,316	\$6,103,101	\$5,874,744	\$7,026,179
Total Budget¹⁰		\$5,712,536	\$5,887,689	\$5,860,529	\$6,406,052	\$6,511,466	\$7,218,144
Surplus		\$153,725	\$311,140	\$111,213	\$302,951	\$636,722	\$191,965

¹ FY2001/02 amount includes additional part-time Dental Consultant staffing. Actual FY2001/02 costs will probably be lower than the amount shown.

² FY2001/02 amount includes additional retirement plan contribution costs. Actual FY2001/02 costs will likely be lower than the amount shown.

³ FY2001/02 amount includes ongoing costs for Diversion Program (\$262,000) and 1-time costs for Dental Auxiliary Study (\$48,000), and Enforcement Monitor services (\$67,000).

⁴ FY2001/02 amount includes Dental Practice Act (DPA) printing costs (\$74,000). Actual FY2001/02 costs will likely be about \$60,000 lower than the amount shown.

⁵ FY2000/01 amount reflects decreased costs resulting from lease renegotiations.

⁶ FY2001/02 amount includes PLEMS/CURES Automation Project (\$20,000) and Cultural and Linguistics Task Force costs (\$89,000).

⁷ FY1998/99 amount includes personal computer replacement costs.

⁸ FY2001/02 amount reflects updated exam site rental rates.

⁹ FY2001/02 amount includes Auditor General billing rate increase, costs for additional Los Angeles Office supervisors, and greater utilization of AG Office staff on Dental Board cases. Actual FY2001/02 costs will probably be lower than the amount shown.

¹⁰ FY2001/02 amount includes Exam Site Rental Rate Increase BCP (Ongoing Funding @ \$140,000), DPA Printing BCP (One-Time Funding @ \$134,000), Retirement Plan Contribution Increase (Ongoing Funding @ \$134,000), AG Rate Increase (Ongoing Funding @ \$71,000), E-Government Project (Ongoing Funding @ \$46,000), and Out-of-Country Travel BCP (One-Time Funding @ \$41,000 Including Ongoing Funding @ \$8,000). Total FY2001/02 Increases = \$641,000 Excluding Peace Officer Follow-Up Study (\$75,000), Occupational Analysis (\$175,000), and miscellaneous other budget adjustments.

- ❑ In FY2001/02, the DBC's authorized budget increased by about \$700,000 from \$6.5 million to \$7.2 million. Actual expenditures for FY2001/02 are estimated to have increased by more than \$1.1 million from nearly \$5.9 million to more than \$7 million. Primary factors contributing to the FY2001/02 estimated increase in actual expenditures include:

- Higher AGO costs (\$400,000)
- Higher staff salary and benefit costs (\$340,000), including additional costs associated with higher retirement contribution rates and retention of a retired annuitant dental consultant
- Higher examination site rental costs (\$220,000)
- Higher printing, communications, and postage costs (\$140,000)
- Higher external service contract costs (\$125,000)
- Higher departmental service contract costs (\$115,000)
- Higher Departmental *pro rata* costs (\$100,000).

These estimated cost increases are partially offset by a \$260,000 reduction in litigation costs. Projections recently prepared by the Department of Consumer Affairs' Budget Office in consultation with DBC staff indicate that the DBC under-spent its authorized FY2001/02 budget by about \$200,000. However, based on our own analysis of these projections, we believe that actual expenditures for the year will be less than estimated, and that the end-of-year surplus is likely to be higher than projected (e.g., \$250,000, or more).

- ❖ As part of our initial assessment, we attempted to identify the portion of the DBC's total expenditures utilized to provide Enforcement Program services. Until a few years ago, the DBC maintained a spreadsheet application that produced an allocation of costs, by program (e.g., licensing/exams, enforcement, and administration). However, the application has not been updated and has a number of imbedded programming logic problems. We attempted to repair the application and to update it to the extent we could using FY2000/01 data. Results of our analyses indicate that, for FY2000/01, about 70 percent of the DBC's total expenditures were utilized to provide Enforcement Program services. This percentage would be higher if it included allocation of Enforcement Program-related internal administrative costs, such as costs for DBC Executive Office, fiscal, and clerical support staff. Excluding allocations of internal administrative costs, about \$4 million was expended for Enforcement Program services during FY2000/01, consisting of the following major components:
 - ❑ Staff salaries and benefits for the 31 authorized positions allocated to the Enforcement Program (\$2.0 million)
 - ❑ Legal services provided by the AGO and Office of Administrative Hearings (\$0.9 million)

- ❑ Allocated Departmental and State *pro rata* costs (\$0.5 million)
- ❑ Other operating expenses such as printing, communications, postage, travel, service contracts, etc. (\$0.5 million).

These results are generally consistent with results of similar analyses previously prepared by the DBC. Additionally, given the \$400,000 increase in expenditures for AGO services and other significant Enforcement Program cost increases during the past year, it appears to us that a similar proportion of the DBC's total expenditures were utilized during FY2001/02 to fund Enforcement Program services.

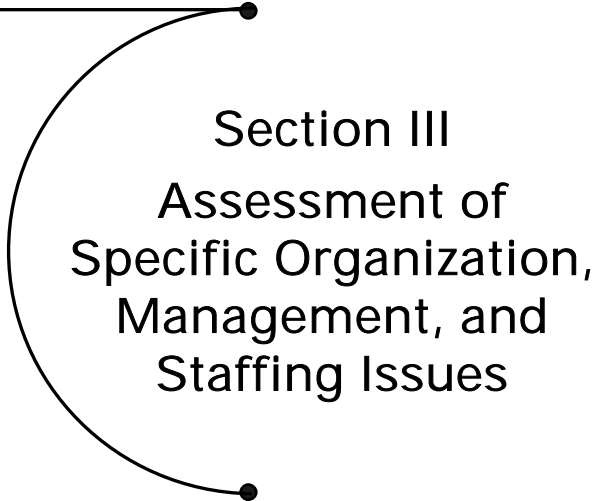
- ❖ During FY2001/02, mid-year expenditure projections were prepared by the Department of Consumer Affairs' Budget Office in consultation with DBC management and staff. These projections showed that the DBC was likely to over-spend its authorized budget. As a result, a decision was made to reduce the amount of funding allocated for AGO services. The AGO then placed a "hold" on certain cases. The adjusted AGO budget was set at \$950,000 which was \$250,000 less than the \$1.2 million amount included in the DBC's authorized FY2001/02 budget. Subsequently, an updated projection showed that as much as \$1.1 million was available to fund AGO services and a decision was made to release the "holds" placed on some of the cases that had been requested just a few weeks earlier.

As recently as mid-June, projections of the DBC's budget status continued to show that it would have only a very small surplus at the end of the fiscal year. However, there were a number of what appeared to be fairly obvious inconsistencies in the projections. When we requested an explanation of these inconsistencies, a revised projection was prepared showing that the DBC would have about a \$200,000 surplus. We again noticed some inconsistencies in the amounts projected for personnel services and various operating expenses, indicating that the actual end-of-year surplus is likely to be more than the \$200,000 amount projected.

Finally, in mid-July, we notified DBC fiscal staff that it appeared that a \$175,000 amount for conduct of an Occupational Analysis was missing from their budget worksheets and projections. Also, DBC and Department of Consumer Affairs' Budget Office staff were unaware of whether or not funds for the Occupational Analysis contract had been encumbered prior to the end of the fiscal year.

Conclusions and Recommendations

- ❑ DBC management and staff need to become much more directly involved in preparing projections of their expenditures and also need to strengthen oversight and control over their fiscal management information systems as necessary to assure that the information produced is accurate and reliable. As will be discussed in subsequent sections, the DBC needs to address serious performance improvement needs in a number of areas, and will likely have to use all of its available funding resources to address these needs. The DBC simply cannot afford to continue to under-spend its authorized budget by significant amounts (i.e., by more than \$1.5 million over the past five years) while neglecting needs to improve Enforcement Program services and performance.



Section III
Assessment of
Specific Organization,
Management, and
Staffing Issues



III. ASSESSMENT OF SPECIFIC ORGANIZATION, MANAGEMENT, AND STAFFING ISSUES

This section deals with the following subjects:

- ❖ Supervisory and management practices, particularly as they concern reviews and analysis of consumer services analyst (CSA), inspector, and investigator work assignments.
- ❖ The use of Board-employed peace officers as investigators, rather than non-peace officer personnel or contracted peace officers.
- ❖ The effects on investigative performance of staffing four positions with limited-term peace officer status.
- ❖ Staffing and workload assignments, including variations in procedures between the Sacramento and Tustin offices, and the need for analysis of workload, staffing requirements, and consistent processes. This subsection also includes discussion of the “time measurement system” which DBC staff were to develop to help define staffing requirements and the proportion of peace officer workload that might be assigned to non-sworn investigators.
- ❖ Allegations of bias in the Board’s Enforcement Program.
- ❖ Performance related to recent enforcement objectives in the Board’s strategic plans.
- ❖ The need for more complete and current documentation of Enforcement Program policies and procedures.

A. Supervisory Practices and Related Issues

- ❖ There is no regularly scheduled supervisory review of case processing at the intake step (prior to CSA assignment). Also, the “case audits” of CSA cases over 180 days old have been performed by a non-supervisor without an investigative background. The new Chief of Enforcement has implemented new case auditing for CSAs to address this issue.
- ❖ Inspection cases (assigned to inspectors) in the Tustin Office were reviewed only about once a year when the supervisor position was staffed; when that position was vacant, there were no formal reviews. Sacramento Office inspector cases are supposed to be reviewed quarterly by the Enforcement Supervisor but the value of such reviews is not apparent. The aging of Sacramento Office inspection cases is three times what is reported for the Tustin Office (about 150 days versus 50 days), although in FY2001/02, the Sacramento Office was assigned less than half the number of cases assigned to the Tustin Office (74 vs. 185, respectively).
- ❖ Probation cases in the Tustin Office used to be reviewed about once a year. In the Sacramento Office, it has been three years since a supervisor reviewed any of the probation cases. Both inspection and probation case-handling processes differ in some respects, depending on whether they are assigned to a Sacramento or Tustin Office inspector or investigator.
- ❖ Supervisory reviews of investigator cases were done quarterly in the Tustin Office when the supervisor’s position was filled. In the Sacramento Office, they have not been performed on a regular basis for at least several years. (The extended aging of these cases, particularly in the Tustin Office, is a major issue that is discussed in more detail in Section IV.) The new Chief of Enforcement, in cooperation with the new Tustin Office supervisor, has implemented new case review processes to address this issue.
- ❖ Investigators rarely receive any type of written annual performance appraisal. One investigator stated that she has received “one or two” in nine years. Annual appraisals of certain Sacramento Office enforcement staff (inspectors, CSAs, AGPAs, and other clerical) were not done prior to three years ago. At that time, the then-new Enforcement Supervisor attempted to conduct these appraisals. However, it is our understanding that the process met with considerable employee resistance, and that the appraisals were never completed. More recently, the Sacramento Office Enforcement Supervisor re-initiated the annual appraisal process during March 2002. However, as of August, no appraisals had been completed.
- ❖ The Tustin Office seems to have had little communication with, or direction from, the central office in Sacramento. Board management needs to initiate formal communication and coordination mechanisms to ensure that this group is not isolated from mainstream organizational issues and processes. The Chief of

Enforcement is currently addressing this issue by conducting periodic meetings on site with Tustin Office staff.

- ❖ We have not found any evidence of management or supervisory analysis of workload or work processes. Documentation of policies and procedures is sparse and often not current. Direction and control have been exercised principally by word of mouth.
- ❖ The fact that the two top enforcement positions (Chief and Supervising Investigator)—plus the Executive Officer's position—were vacant for about six months makes it difficult to assess recent and current management and supervisory issues. Some of the current difficulties may simply be related to the vacant positions. However, interviewees frequently stated that the lack of regular, meaningful work reviews has been the norm for at least several years.

Conclusions and Recommendations

- ❑ Specific supervisory responsibilities and requirements should be defined to meet the types of needs cited here, including conduct of case reviews, annual performance appraisals, analyses of workload and business processes, etc. Improved supervisory practices will be critical to achieving marked improvements in the aging of closed cases (which is discussed separately in Section IV).
- ❑ On an immediate basis, the two inspectors assigned to the Sacramento Office should report to a sworn supervisor. The only Sacramento-based position that currently meets this requirement is the Chief of Enforcement. The Chief of Enforcement recently assumed direct supervisory responsibility for these two positions.

B. Use of Board-Employed Peace Officers

Our research indicates there are two parts to this issue dealing with the use of peace officers to conduct investigations of complaints filed against dental licensees:

Sub-Issue 1: *Should peace officers perform all of the work on cases screened for investigation by CSAs? This sub-issue is further divided into two potential implementation alternatives: (a) the use of non-sworn investigative assistants to help sworn personnel complete case investigations, and (b) the assignment of all investigative steps for certain cases to non-sworn personnel.*

Sub-Issue 2: *Should the DBC employ its own peace officers or contract for these services?*

Sub-Issue 1(a)— Supplementing the Sworn Investigative Staff with Specialized Non-Sworn Assistance

- ❖ We have not found any prior analysis that questions the need for peace officer (sworn) status to conduct at least some significant portion of the investigative work; the only question that has been raised is whether some portion of the work performed by sworn personnel could be completed by a non-sworn investigative classification (the exact classification is yet to be determined). A key problem in analyzing this alternative involves the need to correctly estimate the amount of “assistance-type” work.
- ❖ Some investigative *support* work normally performed by peace officers can be assigned to non-sworn personnel under certain conditions; it is done in many police departments and at the Medical Board of California (MBC). The reference here is to activities of a support or assisting nature, not the general assignment of all investigative steps for certain case types. To succeed at the DBC, however, there must be a sufficient volume of this work to generate the full-time workload for an “investigative assistant” (or similar class), and still leave a sufficient “critical mass” of sworn positions.
- ❖ Several years ago, the Medical Board assessed the tasks performed by its peace officers and determined that some could be handled by investigative assistants (IAs). Currently, there are 11 IAs working for 85 sworn personnel (73 investigators and 12 supervising investigators) in the 12 MBC district offices, or about a 1:7/8 ratio. There is no IA in offices with less than 6 investigators.
- ❖ We do not have sufficient information on the *assistance-type* tasks that IAs could perform at the DBC, but if the MBC ratios are applicable, only the Tustin Office might support full-time use of an IA. Even the Tustin Office situation is nebulous and would require considerably more analysis, especially considering that 3 of the office’s 8 authorized investigator positions are currently vacant.

- ❖ The conversion of only one (or even two) sworn positions to non-sworn would have a minimal impact on costs (see additional discussion of costs under the “Sub-Issue 2” heading).

Sub-Issue 1(b)—Bifurcating the Investigative Process

- ❖ *Estimating the Division of Work for Investigative Assignment of Selected Cases*—The reference in this sub-issue is to a division of cases among sworn and non-sworn investigative classifications, as opposed to the “assistance” type of non-sworn activity discussed above. A November 2000 consultant report suggests that non-sworn investigators be assigned certain types of cases. If during an investigation the need for peace officer authority becomes apparent (for a select set of tasks or to take over the case completely), the report stated that a sworn investigator could be called to handle the assignment. Several types of *investigation cases* were suggested for non-sworn assignment (e.g., dentist negligence and competency, and unprofessional conduct, which were said to account for about 70 percent of all cases). We have insufficient information to determine how many of these cases, or any others, can be investigated from start to finish without using peace officers. Our estimate at this point, *especially given the high number of dentists who have multiple complaints—including multiple types of violations—pending at the same time*, is that the percentage of cases would be much less than 70 percent.
- ❖ *Determining Which Cases to Assign to Non-Sworn Personnel*—Much more analysis would have to be completed to determine which cases—*based only on the information available at the time of investigative assignment*—would be strong candidates for non-sworn assignment. We assume that a somewhat lengthy list of criteria would be required and that analysis and decision-making concerning this issue either would be automated, or it would increase CSA processing time to some limited degree.
- ❖ *Difficulty of Isolating Cases for Assignment, and the Impact of Dentists with Multiple Cases*—Many of the cases that reach the investigative stage are connected because they are associated with the same dentist. That is, a dentist may perform negligent work on multiple occasions, commit fraud in billing for services, and abandon patients under his/her care. Based only on a brief review of the June 6, 2002 list of assigned, active cases, it appears that the number of dentists involved is about 40 percent less than the number of cases. At this rate, and assuming about 500 new investigative cases a year, the base number of investigations to be “shared” between sworn and non-sworn might be reduced by about 200, to just 300. The “pot” becomes substantially smaller when this factor is considered.
- ❖ *Costs Versus Investigative Effectiveness and Efficiency*—There would be some reduction in costs for every sworn position converted to a non-sworn class. The savings was estimated at 5 percent of the sworn position cost in the November 2000 consultant report. Working with DCA personnel specialists, we have been unable to quantify the amount in specific terms because of various factors that

impact pay and benefits. Nevertheless, the amount of savings per position is believed to be relatively small, primarily because the state pays FICA for non-sworn classifications but not for sworn.

If the conversion to non-sworn is significant (i.e., several positions or more) offsetting losses in investigative effectiveness and efficiency can be expected for the following reasons:

- ❑ Peace officers have substantially higher levels of investigative training and, typically, should conduct better quality investigations. There is no guarantee of a better investigation in all cases; our point is simply that, on average, one should expect a better product given the more rigorous selection and training qualifications of peace officers.
 - ❑ Peace officers can perform all investigative tasks at a given site, thereby negating the need for a second person (IA) to make the same trip to perform a limited range of tasks.
 - ❑ If the non-sworn person investigates part of a case before determining the need for a peace officer, there will be some duplication of effort. First there is the transfer of all pertinent information and, often, the peace officer then will repeat some of the same tasks completed previously by the other investigator. The patient, dentist, experts, etc., all will experience a change in their key DBC contact and will, inevitably, regurgitate much of what has been stated previously.
- ❖ *Potential “Like Work, Like Pay” Argument if Special Provisions Legislated to Improve Non-Sworn Efficiency*—The November 2000 consultant report suggests that the DBC could seek legislation to allow its non-sworn investigators to make arrests and serve search warrants, as provided for specialized classes of personnel under Penal Code Sec. 830.11. This would increase the scope of work that could be done by these classifications. However, it may also lead to a like work, like pay situation where non-sworn personnel argue for higher pay and/or more costly benefits because they are doing many of the same jobs as sworn personnel.
- ❖ *Public Perception of the Change*—A decrease in the employment and training qualifications of some DBC investigators may send the wrong signal to consumer advocacy groups and the public-at-large, just at a time when the Legislature is trying to improve the enforcement function of this Board. At least one consumer advocacy organization we contacted strongly opposed such a change. See also the comments in the next paragraph.
- ❖ *Importance of Dental Board Cases vs. Others Investigated by Peace Officers*—The DCA’s Division of Investigation (D of I) uses only peace officers to conduct investigations of complaints from a variety of licensing entities, including architects, barbers, cosmetologists, registered and vocational nurses, optometrists, and shorthand reporters. This D of I practice has been in place for many years. Reallocation of some DBC cases from peace officers to a non-sworn class would be inconsistent with the long-standing, accepted D of I

practice, and would add additional concern regarding the public's perception of the change.

Sub-Issue 2—Contracting with Another Agency for Peace Officer Investigative Services

- ❖ The DBC could contract for services requiring peace officer status. The two most likely contracting candidates would be the D of I in the Department of Consumer Affairs, and the Medical Board of California. Given the limited time available for Phase I of our project, we completed only a preliminary, very general analysis of the D of I contracting option. Our tentative conclusions are summarized below.
 - ❑ The major reason to consider D of I contracting is to improve performance. In terms of only case aging, there does not seem to be an advantage at this time. The Division's overall averages for case aging are comparable to those at the DBC.
 - ❑ We were told that, initially, there would be some specialization in dentistry as the D of I assimilated the Dental Board investigators. Long-term, however, all D of I peace officers are investigative generalists and there would be no specialization in Dental Board cases. This lack of specialization has the potential to negatively affect investigative quality and public perceptions.
 - ❑ At current D of I contracting rates, there probably would be a substantive increase in costs to the DBC.
 - ❑ The above negative aspects of the proposal seem to outweigh the positive aspects, given what we know at this time. However, an objective final decision on this alternative would require much more analysis of D of I performance than we have been able to accomplish thus far.

Conclusions and Recommendations

- ❑ Preliminarily, we do not support the concept of reallocating some of the current DBC peace officer workload to an "assistant-type" of non-sworn position because we are not convinced that there is sufficient work of this type to (1) efficiently utilize the non-sworn person(s), and (2) continue to maintain a fully trained critical mass of peace officers. Moreover, before a thoughtful decision can be made on this alternative, one must first be assured that current peace officer staffing reasonably approximates workload requirements. The DBC has a good deal of work to do before answers to this question can be determined.
- ❑ We are substantially opposed to the alternative of bifurcating the investigative caseload by assigning some cases (at the outset) to sworn peace officers and some to non-sworn investigators. This concept has minimum potential to produce advantages that outweigh the disadvantages. We are convinced that it would be a step backwards at a

- time when the DBC needs forward, improved movement in its Enforcement Program.
- ❑ Contracting for peace officer investigations may be a viable alternative, but much more analysis of policies, procedures and costs would be required before objective decisions can be made.
 - ❑ This leads to the following Phase I recommendations:
 - Forego further analysis of the potential use of non-sworn investigators to replace some of the DBC's peace officers. Given the DBC's current workload and staffing, we do not believe either approach to this alternative investigative concept is worthy of further consideration. Future analyses should focus on whether the DBC's existing number of authorized investigator positions is sufficient to sustain the delivery of basic services, and not on whether fewer sworn peace officers are warranted.
 - Forego further analysis of contracting for peace officers services, at least for the two-year period of the monitoring contract.
 - Concentrate consultant and DBC resources on developing and implementing a plan to improve Enforcement Program performance over the next two years, rather than making the drastic decision now to contract the investigative function. In other words, we support giving the DBC ample opportunity to improve its services once it has in place a new management and supervisory team, and a newly constituted Board. If significant improvement is not achieved within a reasonable period of time, then alternatives to maintaining an independent Enforcement Program may be considered.

C. Impact of Positions With Limited-Term Peace Officer Status

- ❖ Originally, SB 826 designated seven investigator series positions with limited-term (LT) peace officer status. Three investigator series positions have since been reclassified to non-sworn classifications. The perception in the field is that the remaining four investigator series *positions* (all in the Tustin Office) are limited term. DCA has stated that the *positions* are permanent but the *peace officer status* of the persons appointed to these positions is limited term. However, the investigators we spoke with did not seem to be aware of this distinction. Moreover, if they did recognize the distinction, it is not likely to make a significant difference in the impact on investigator staffing in the Tustin Office.
- ❖ The limited-term peace officer status of some of the investigator positions in the Tustin Office is said to be the primary cause of repeated turnover among personnel in the positions. As of July 1, 2002, two of the four LT positions were vacant, one for two months and the other for four months. One of the previous incumbents stayed only nine months, and the other 16 months. An earlier incumbent stayed only six months. Conversely, the four Tustin Office investigator positions with permanent peace officer status have all been staffed with senior investigator who have at least seven years experience each. (Note: The recent promotion of one senior investigator to supervising investigator has left one vacancy in these ranks.)
- ❖ A few examples of the impact of this turnover on case investigations are provided here, based on the June 6, 2002 report of assigned investigations:
 - ❑ A couple of Tustin Office cases are five to six years old. Another serious case involving the operation of an unlicensed practice is 4.4 years old, but has been assigned to the current investigator only 62 days (i.e., the result of repeated reassignments). One investigator left in 1999 for about 20 months, returned to the DBC, and is now getting cases reassigned to him that he had when he left. Some have sat for many months with no one assigned. More examples of problems caused by turnover can be provided if necessary.
 - ❑ The average total aging of *active* Tustin Office cases is 87 percent higher than for the Sacramento Office (457.4 days to 244.5 days). The Sacramento Office has had a stable complement of four senior investigators with between 8 and 15 years experience each. (Note: As occurred in the Tustin Office, the recent promotion of one senior investigator to Chief of Enforcement has left one vacancy in these ranks.)
 - ❑ Prior to the recent supervisory promotion, only six of the eight authorized Tustin Office investigator positions were filled; however, one primarily monitors probationers and was assigned very few cases, and the other is relatively new and had a caseload of only 25 cases. The four senior

investigators were assigned an average of about 53 cases each, or 37 percent more than the four Sacramento Office investigators who had an average of 39 cases each (i.e., also prior to the promotion of one Sacramento Office investigator to Chief of Enforcement).

- ❖ Of course, other factors may bear on the above disparities (e.g., absence of effective supervisory practices, differences in productivity levels, etc.). Nevertheless, we are convinced that the relationships between LT peace officer status, high turnover, constant vacant positions, and substantially lagging performance are real and significant.
- ❖ If the Legislature accepts our conclusion that peace officers should be used for DBC investigations, then the number of investigator positions justified by the workload will be required whether they are employed by the DBC or a contract organization. Our only question currently is whether the total of 12 investigator positions (and four inspectors) is the right staffing level for the assigned workload. We will not know the answer until additional analysis is completed by the DBC. Nevertheless, we believe that the current number of authorized peace officer positions is not substantially out of line, and that any recommended adjustments would not amount to more than one or two positions, either way.

Conclusions and Recommendations

- ❑ The limited-term restriction is clearly hampering the ability of the Tustin Office to operate effectively. Elimination of this restriction should not create any long-term staffing situation that is not resolvable through the established budget processes.
- ❑ Elimination of the LT restriction may have positive influences on the morale of investigative staff that reach beyond the obvious direct impact on workload.
- ❑ In order to provide the DBC with adequate resources, the limited-term restriction on peace officer appointments should be repealed. Subsequently, in Subsection III.D, we present a related suggestion for developing a plan to complete a staffing analysis to determine the number of permanent peace officer positions needed.

D. Staffing and Workload Issues

Scope of This Planning Subject

Included here are several interrelated issues bearing on the adequacy and use of authorized enforcement personnel, such as:

- ❖ The need for more objective analyses of workload levels and staffing requirements for all key enforcement functions and classifications
- ❖ A previous plan to develop a "time measurement system" that would report time-by-activity data on the investigators' assignments, for use both in analyzing staffing requirements and to determine which tasks might be assigned to non-sworn investigators
- ❖ Consistency between the Sacramento and Tustin offices in the use of personnel and work processes
- ❖ Equitable approaches for dealing with substantially different productivity levels among personnel performing the same functions.

Examples of needs associated with these subjects are summarized below.

Investigator Caseloads and Staffing

- ❖ In FY2001/02, Tustin Office investigators were assigned 338 new cases (60.8%), while the Sacramento Office was assigned 218 cases (39.2%). The Tustin Office has 67 percent of the authorized investigator positions (i.e., 8 positions to 4). However, as noted previously, the Tustin Office has been plagued with turnover and vacant positions associated primarily with the allocation of four positions with limited-term peace officer status. There also is the view of Tustin Office investigators that their cases tend to be more complex and result in criminal prosecution more frequently. We have no way of determining the validity of the former statement, but the latter is thought to be true by the new Chief of Enforcement. In any event, both offices currently are working with less than their full allotment of investigators. The Tustin Office has one investigator still assigned to most of the probation cases, and three vacant positions, while the Sacramento Office has one vacant position.
- ❖ Elsewhere in this report (Sections III.C and IV.A), there are numerous details regarding the excessive aging of cases at the investigative (and other) steps. We cannot determine with the data available whether the delays result from inadequate staffing, other causes, or a combination of causes. Moreover, we are reluctant at this time to analyze staffing levels (even in general terms) by comparing the average caseloads of DBC investigators with those of the Medical Board or the DCA's Division of Investigation. Without more detailed information on the types of cases the MBC and D of I are handling, it would be premature and perhaps erroneous to assume that the DBC's time requirements per "average" case are comparable to either of the other two organizations.

- ❖ More discussion of workload and staffing analysis is presented under the next sub-heading.

Time Measurement System

- ❖ The November 2000 consultant study suggested that the DBC develop a time measurement system that would permit reasonably accurate calculation of an investigator's time-by-task. This information then could be used to (1) determine how much time is spent on tasks that might be assigned to non-peace officer investigative personnel, and (2) to determine overall investigative staffing requirements. Of course, use for these purposes would necessarily assume that accurate workload data to support such calculations are available. That has not been the case in the past.
- ❖ We were told that about January 1, 2002 (or before), the DBC's investigators began tracking their time per case on a large form stapled to each case folder. This information eventually was to suffice for the purposes stated in the previous paragraph. However, we were unable to obtain any documentation of specifically how time was to be recorded and suspect that individual approaches may vary (e.g., include travel time or not, how to allocate travel time when more than one case is worked per trip, varying levels of other detail, etc.). Essentially, we believe the information compiled thus far may be of limited value. It may provide some general estimates of time-by-case, but only after a careful quality control review of each investigator's procedures and forms.
- ❖ Perhaps more important, our current view is that detailed time-by-activity analyses of the workload assigned to a relatively small unit of 12 positions may be unnecessary. A few large variations in data of this type could result in significant deviations in results. The size of the unit, and the long cycle times involved in completing case investigations, seem to justify a more generalized approach to objectively defining investigator staffing requirements.
- ❖ An associated point is that overall Enforcement Program staffing requirements should be assessed, including inspectors, CSAs, and other positions. To the extent it is practicable, an approach should be selected that incorporates all significant staffing concerns.

Probation and Inspection Cases (Inspector Caseloads)

- ❖ Probation monitoring in the Sacramento Office (76 active cases as of June 6, 2002) is assigned to two inspectors, who also handle all inspection cases (i.e., 74 inspection cases assigned in FY2001/02). In the Tustin Office, an investigator has been monitoring all probationers for about a year (103 active cases as of June 6th). Prior to that, the lone Tustin Office inspector had this assignment, plus all inspection cases (185 inspection cases assigned in FY2001/02). Because the inspector could not keep current with both assignments, the prior Tustin Office supervisor transferred all of the probation workload to an investigator. Now the Tustin Office has a second inspector and some of the probation cases are being reassigned back to inspectors, and the

investigator is being assigned a small number of other cases. Presumably, all probation cases will be assigned to the Tustin Office inspectors, but there has been no clear directive issued to affected staff regarding this option. The following needs are associated with this situation:

- ❑ For at least a year or more, the Tustin Office has handled all probation and inspection assignments with two positions, despite the fact that it has a higher caseload (typically 55 to 60 percent of the statewide probation total, and 71 percent of the inspection cases). Based on our interviews, Tustin Office personnel also seem to do more on-site monitoring and follow-up work than the Sacramento Office. This situation warrants closer review by the Chief of Enforcement to determine if the Sacramento Office has some excess inspector time that could be applied to other needs.
- ❑ Probation monitoring practices differ between the Tustin and Sacramento offices, with more on-site follow-up and monitoring by Tustin Office staff. Also, in the Southern Region, samples for drug testing are provided by the probationer at a contract laboratory. Also, the cost is paid by the probationer (\$25 per sample). In the Northern Region, inspectors drive to the probationers' offices to collect the samples. This is a more time-consuming approach.
- ❑ The use of a higher trained and paid classification (investigator) to offload inspector work in the Tustin Office may not be the best approach. A decision needs to be made and promulgated as to whether the current allocation of probation cases will continue or whether all will be transferred to inspectors.

CSA Workload

- ❖ CSA pending cases, and particularly cases over 180 days, have been substantially disproportionate despite relatively equitable assignment patterns, apparently reflecting significant differences in staff productivity levels. Productivity differences in this key assignment should be assessed and addressed in the coming months.
- ❖ The three CSAs screen nearly all of the new complaints (3,178 in FY2001/02), and are responsible for resolving all cases not referred to investigators or inspectors (2,363 cases in FY2001/02). Also, many of the 815 cases referred to investigators and inspectors require nearly as much work as some of the other cases (e.g., obtaining dental records, handling initial phone calls, completing referrals to dental consultants, etc.). Assuming each CSA works the equivalent of about 1,750 productive hours a year (excluding vacations, holidays, sick leave, daily breaks, etc.), they would have an average of less than two hours per case to complete all work. Currently, we are unable to determine if this is sufficient time to satisfactorily perform all tasks, and we are concerned that it is not.

- ❖ As of June 30, 2002, the CSAs had 971 pending cases. Elsewhere in this report we submit recommendations that will increase the CSA workload to some degree (see, for example, the discussion of malpractice cases under Section IV.C). Whether our recommendations are accepted or not, we are concerned about the adequacy of CSA staffing, which can affect the number of complaints referred to investigators and inspectors.

Conclusions and Recommendations

- ❑ The Enforcement Program Improvement Plan should include a specific component to develop a plan to complete a staffing analysis. The plan should require development of information necessary to make a reasonable determination of the number of peace officers, inspectors, CSAs, and key support staff needed for the Enforcement Program. This will necessitate the establishment of consistent processes used by affected personnel, with exceptions limited to unique situations.
- ❑ Pending development of a plan to complete an analysis of Enforcement Program staffing requirements, the DBC should proceed with implementation of an automated investigative activity reporting system based on the system currently used by the Medical Board. Until revised, investigators should continue completing time-by-activity forms used to capture investigative activity time expenditure data. Several months ago, the DBC entered into an MOU with the Medical Board to modify their existing investigative activity reporting system for the DBC's needs.
- ❑ With regard to the differences between the approach of the Sacramento and Tustin offices to collecting samples for probationer drug testing, we recommend that the Northern California laboratory contract be amended to provide for collection of drug test samples as is done currently in the Southern Region.
- ❑ One person in each region should be designated as a probation monitoring coordinator. This job was previously performed by various supervisors or managers until those positions became vacant. The job is described in the duty statement of the current Enforcement Coordinator, but she has never been asked to perform it and, now, may have little time to do so because she is assisting the Examination Unit. Needs exist to provide oversight of this important program.

E. Allegations of Enforcement Bias

- ❖ A concern exists among some special interest and advocacy groups that the DBC has used its enforcement or disciplinary processes to differentially prosecute or protect a particular group of licensees. For example, it is alleged that the DBC's enforcement has focused on preserving the economic status quo in dentistry and the policies of the California Dental Association instead of on protecting consumers (e.g., by differentially targeting non-member "amalgam-free" dentists). Conversely, it is alleged that the DBC has acted against the interests of the California Dental Association by frequently disregarding the recommendation of an Administrative Law Judge (ALJ) and imposing harsher disciplinary measures on current licensees, most of which are Association members. No analyses of either of these issues were completed as part of this initial assessment.

Conclusions and Recommendations

- ❑ Representatives of several of the interest groups that we interviewed expressed concerns in this area, notwithstanding the recent reconstitution of the DBC's governing board. A consensus exists that the Board's disciplinary decisions over the past several years need to be profiled to verify whether any of these allegations are supported. Then, it is suggested, this historical record should be compared to the current Board's actions to assure that any identified bias is not still continuing. It should be noted, however, that the DBC's management information systems do not provide most of the data needed to perform this type of assessment, and that a manual review of each disciplinary case would have to be completed, which may be difficult, time-consuming, and costly. Further assessment of alternative approaches for addressing this issue will be performed as part of our Phase II planning efforts.

F. Enforcement Strategic Plans

- ❖ Each of the annual updates of the Board's Strategic Plan (first issued in May 1997) contains specific objectives and action plans associated directly with the Enforcement Program. Our review of these documents for the past five fiscal years indicates that there has been no substantive implementation of the planned actions and improvements described in the updates.
- ❖ To support the above statement, we cite the last two annual plans for FY2000/01 and FY2001/02. The latter plan is a virtual duplicate of the FY2000/01 plan, including the same target dates (some of which had passed before the start of FY2001/02). Both plans contained these two objectives (paraphrased here):
 - ❑ To complete an analysis of the Enforcement Program to ensure that adequate personnel and financial resources are available to provide effective consumer protection.
 - ❑ To complete an analysis of the Drug Diversion Program to ensure it is staffed and funded adequately, and that it provides consumer protection.
- ❖ Based on our interviews and research to date, there is no evidence that management has taken steps to implement actions necessary to support achievement of the strategic planning objectives. There were some initial discussions with the Drug Diversion Program contractor during CY2000 regarding initiation of on-site validation of work restrictions, but those talks stalled and there has been no further pursuit of this concept for about two years.

Conclusions and Recommendations

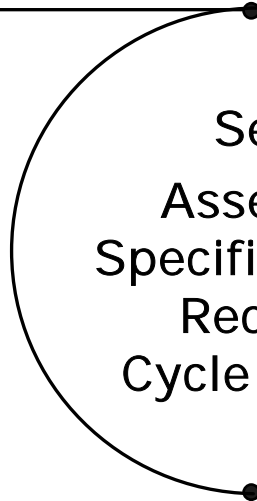
- ❑ The DBC will have a substantial amount of tactical-level planning and implementation to complete if it produces the type of Enforcement Program Improvement Plan we envision. Development of longer-term strategic plans for the Enforcement Program probably can be postponed for now.

G. Documentation of Policies and Procedures

- ❖ There is minimal documentation of policies and procedures, and some of what is documented is not current. This leads to confusion or differences in how employees approach their assigned work. Examples include the following:
 - ❑ Policies enunciated by the Board over the past years are not documented and placed in an accessible reference file.
 - ❑ New personnel are assigned to their jobs without benefit of an up-to-date set of procedures.
 - ❑ The "Complaint Procedures Manual" contains incomplete and some incorrect information regarding the critical issues of when to purge hard copy complaint files. Also, some people we interviewed stated they had never seen or heard of this manual, although they are substantially involved in the complaint process.
 - ❑ The policy on what information may be disclosed to the public regarding prior complaints against dentists is neither documented nor clearly understood by key people in the Enforcement Program.
- ❖ The absence of documented, current policies and procedures also limits the ability of the DBC to cross-train employees in order to provide relief when one employee is off work for vacation, illness, etc. Development of appropriate documentation will require an extended effort by a variety of enforcement employees in order to achieve desired improvements.

Conclusions and Recommendations

- ❑ The DBC should identify all significant areas requiring documentation of policies and procedures, and schedule the completion of this activity over a phased period of time. A central file of administrative and operating policy directives should be established and one person should be assigned responsibility for updating its contents. All employees involved in various procedures should have copies of relevant manuals or directives that specify how work is to be performed. The Chief of Enforcement has begun the process of developing a Probation Manual, and updating the Investigator Manual and the Legal Desk Manual. Additionally, a new Supervisor's Desk Manual is being developed.



Section IV
Assessment of
Specific Operations,
Records, and
Cycle Time Issues

IV. ASSESSMENT OF SPECIFIC OPERATIONS, RECORDS, AND CYCLE TIME ISSUES

Included here are discussions of the following topics related to current Enforcement Program operations:

- ❖ Significant needs and issues related to extended delays in the case handling and investigative processes that are apparent at virtually all stages. This includes a concern that the general operating environment does not sufficiently emphasize the need for prompt, complete resolution of consumer complaints.
- ❖ Problems associated with obtaining dental experts to testify for the state.
- ❖ The various policies and processes of the Attorney General's Office (AGO), the aging of cases within this organization, and the need for improved monitoring of cases after they are forwarded to the AGO.
- ❖ Special issues and concerns related to malpractice settlements, arbitration awards, and court judgments.
- ❖ The processing of Denti-Cal cases and cases involving dentists who have no prior complaints on file with the DBC.
- ❖ Miscellaneous other subjects affecting Enforcement Program operations, including records retention policies and practices, use of priority codes, multiple agency involvement in dental fraud investigations, and the manner in which the closure of non-disciplinary cases is communicated to complainants.

A. Case Processing Delays and Case Aging

Wide Scope of the Need

Past attention may have focused principally on the steps involving the Consumer Services Analysts (CSAs) and investigators. However, exceptional delays seem to be occurring at many different steps, and may be particularly bad for certain types of cases. Potential causes may be a lack of concern about whether a case is processed or closed promptly, lack of cross training, lack of effective supervisory attention, poor productivity (as compared to peers), and lack of systematic "relief" assignments when people are not at work.

- ❖ *Overall Process Lacks Smooth Flow*—Cases seem to be routed in groups, not as a steady stream. This may or may not be meaningful in terms of aging, but it could have some impact (e.g., peaks and valleys in workflow may result in varying levels of productivity).
- ❖ *Intake*—One person is assigned to open mail and complete initial processing. When off duty, no one does his job. Recently (April 2002), a large backlog accumulated at this point resulting in the submission of 106 cases to the enforcement clerk in the first week of May. Another example: 321 cases were sent to the clerk in January 2002, and only 75 in February. The intake flow is uneven and has experienced a two- to three-week delay. Delays here have resulted in the letter of acknowledgement not being sent within 10 days of receiving many complaints, as required by statute.
- ❖ *Denti-Cal Cases*—We were told by several people that these cases often sat for *many* months on the desk of a prior supervisor. Now they are assigned to an AGPA who sends them to a consultant. The consultant determines whether to close the case or assign it for investigation. See our recommendation concerning this practice presented below under the "Malpractice Cases" heading.
- ❖ *Malpractice (800-805 B&P) Cases*—Settlements and arbitration awards alleging malpractice by dentists must be reported to the DBC by insurance companies per Sections 800 through 806 of the Business and Professions (B&P) Code. These reports have been routed to supervisors where, on occasion, they remained for weeks at a time before decisions were made to assign them to a CSA to obtain records, or to close them due to "Insufficient Evidence."
- ❖ *Consultant Review*—There have been considerable backlogs at this step. The problem was temporarily addressed to a limited extent with the part-time employment of a retired annuitant (20 hours/week) to assist the two full-time consultants. More recently, the situation again worsened when one of the full-time consultants took an extended sick leave and no one was readily available to assume his workload. Also, cases tend to be assigned to the consultants in large batches (e.g., 10 to 19 at a time, per recent logs). Variations in backlogs

and productivity also occur at the consultant step when one or more CSAs are off duty (vacation) or a CSA position is vacant.

- ❖ *CSA Closing Letters*—CSA closing letters must be reviewed by the Enforcement Supervisor or one of the AGPAs, per a new policy initiated several years ago. These letters can (and do) back up on the desks of any of the three positions.
- ❖ *Investigators*—The extensive aging of cases at the investigator step is a problem statewide, but is particularly bad in the Tustin Office due to turnover, vacancies, and an apparent lack of supervisory emphasis on this issue. Investigators know that, because of the aging, many of these cases will not be accepted by the AGO, but they still remain open.
- ❖ *Experts*—Each quality of care case requires review and support by an “expert,” i.e., an independent, qualified dentist. Some of the aging is related to the difficulty in finding experts willing to undertake the work with the recognition that they may have to testify for one to two days at \$75/hour. This means that they would have to shut down their practice for this period of time, resulting in a net loss of revenue. An AGO representative and others also identified the low rate of expert pay as a problem. In addition, investigators have no control over the amount of elapsed time an expert takes to review a case and provide a written opinion. The amount of time can vary significantly among the experts.
- ❖ *Attorney General*—A separate discussion of cases forwarded to the Attorney General is provided later in this report section, under Subsection B.
- ❖ *Board Review and Approval/Rejection of Discipline Recommendations*—The full Board must approve or reject decisions of the Administrative Law Judge (ALJ) and stipulated agreements negotiated by the AGO. The Board does not have to accept the ALJ’s decision or the stipulated agreements. Because the Board did not have sufficient members for a period of about five months, some cases were delayed at this step in the process. Also, there will always be a time delay for any case that is ready shortly after a Board meeting (i.e., the decision must wait until the next meeting), and for cases where the Board modifies or rejects the ALJ decision or the stipulated agreement.

Conclusions and Recommendations

- ❖ Representatives of several of the special interest and advocacy groups that we interviewed expressed concerns about the extended timeframes needed by the DBC to perform complaint resolution, investigation, and disciplinary functions. These same concerns also have been noted in prior reports prepared by the California State Auditor and the Department of Consumer Affairs’ Internal Audit Office. These extended complaint handling timeframes make the complaint resolution process unnecessarily burdensome and costly to the complainant and the licensee, and also to the DBC. Additionally, the failure to provide for due process on a timely basis serves to undermine the credibility of the entire regulatory program, and reflects poorly not just on the Dental Board, but also on

the Department of Consumer Affairs, the Attorney General's Office, and other public agencies at the federal, state, and local level. In summary, protracted complaint processing timeframes work at cross-purposes to the interests of both consumers and dental professionals, as well as the interest of all governmental agencies involved in protecting consumers from unsafe or illegal dental practices.

- ❖ The overall area of case processing and aging should be a major focus of the DBC's Enforcement Program improvement planning. A high priority should be placed on regularly reviewing aged cases and achieving a significant reduction in the amount of time needed to close complaints at each stage of the complaint handling process. Additionally, reasonable elapsed time objectives need to be established for the processing of cases at each step, with subsequent monitoring of performance by management and supervisors. There also is a need to assess the extent to which a lack of cross training and a pre-planned approach to staffing "relief" affects case aging. Alternatives for meeting these two needs should be considered. Quarterly informational reports probably should be prepared for review by Board members as well. The Chief of Enforcement has recently completed targeted reviews of aged cases at various stages and collected reference materials needed to support establishment of elapsed time objectives.
- ❖ Stop the special processing of malpractice and Denti-Cal cases. Assign these cases to CSAs and handle them as though they were any other complaint from a patient. Separate processing is delaying the cases unnecessarily and, with regard to malpractice cases, use of the Chief of Enforcement to complete initial screening seems an inappropriate use of management time. The Chief of Enforcement has already implemented this recommendation. Additional suggestions concerning malpractice cases are presented subsequently in Subsection IV.C.
- ❖ An analysis should be completed by the DBC regarding alternatives for decreasing the time required to obtain experts, and for managing more effectively the elapsed (calendar) time they spend reviewing and reporting on cases. Substantially higher rates of expert pay when testimony is required (e.g., \$200/hour) may help considerably. For example, the Medical Board pays its experts \$100/hour for case review and reporting, and \$200/hour for testimony, with a limit of eight hours/day for the latter cost. An analysis of compensation rates paid for experts should be completed, which includes at least the following:
 - ❑ Cost estimates for varying levels of pay, using FY2001/02 data as the basis. (Total costs for experts this past year were about \$80,000, but it would take detailed records reviews to determine the number of testimony hours involved versus case review and reporting hours.)
 - ❑ Alternatives for controlling the elapsed time of the review and reporting process, e.g., reduced hourly payments for reports submitted after "x" days.

- ❑ Preparation of a summary report for the Board with appropriate recommendations. It is our understanding that the Board has the authority to change the compensation rates for experts.

B. Attorney General's Office (AGO) Processes

Process and Cycle Time Objectives and Constraints

- ❖ Comments presented here are derived primarily from our interview with a senior assistant attorney general and two supervising attorneys on his staff. The AGO does not have a data system that reports aging of cases either overall or by process step. For the typical general case (i.e., excluding complex cases or those with submission of significant supplemental investigations) the AGO's aging objectives are:
 - ❑ Assignment of a deputy attorney general (DAG) within five days of receiving the case; anything over ten days is considered too long.
 - ❑ Filing of the accusation within 60 days, although they probably are not achieving this objective currently.
 - ❑ Return of a stipulated agreement to the Board for approval (i.e., no hearing) within 180 days.
 - ❑ If a hearing is involved, the ALJ's decision may be returned in about 270 days (i.e., 3 months longer than cases without a hearing).
- ❖ Based on a limited review of currently active cases at the AGO, it appears that the above processing objectives are not being met in many instances, particularly the assignment of a DAG and the filing of an accusation. However, many of the currently active cases have been submitted in the past two fiscal years and, thus, were subject to the specific constraints noted under the next sub-heading.

Constraints on Recent and Current AGO Processes and Case Aging

Various factors have affected the aging of AGO cases in the past few years, as follows:

- ❖ In FY2000/01, the AGO was unable to hire sufficient legal staff to perform at anticipated levels of work for all licensing clients. Thus, they expended only \$700,000 out of a budgeted \$1.1 million for the DBC. Case aging was, of course, negatively affected.
- ❖ Subsequently in FY2001/02, the AGO obtained approval to hire limited-term (LT) attorneys. This caused an increase in spending in the first half of that fiscal year, but then two negative developments occurred.
 - ❑ First, in January 2002, the DBC cut the AGO's planned budget of about \$1.2 million to about \$950,000. Subsequently, on April 29, 2002, \$150,000 of this cut was restored, resulting in a total budget of \$1.1 million. However, by early- to mid-April, many cases had already been placed on "hold" until July 1, 2002. Then, some were re-started in May. This start and stop process created unnecessary work (to stop and then

- re-start a case, obtain new hearing dates, etc.), and increased the average aging of all cases in the AGO queue. It also makes it difficult to complete an accurate calculation and analysis of case aging at the AGO.
- ❑ Second, the current state government hiring freeze is constraining the AGO's ability to replace departing attorneys and hire the LT positions.
 - ❖ Processes and decisions within the Office of Administrative Hearings (OAH) are not under the control of the AGO. In Southern California, the OAH is setting hearings about seven to eight months from now. The problem, we were told, is a lack of ALJs and related staffing due to the hiring freeze.
 - ❖ The DBC is somewhat unique among licensing boards in that it seems to have more situations involving multiple cases for a single licensee. This can extend the time required to process a case if supplemental investigative reports are submitted at a later date.
 - ❖ The litigation environment in Southern California is more difficult than in the North. These cases take more DAG time. Unfortunately, there are more cases in the South than in the North.

Impact of FY2001/02 Budget Changes

- ❖ As stated previously, the DBC first reduced the AGO's budget by \$250,000. This logically caused the AGO's staff to be somewhat restrictive in determining what cases they worked. By early April, many of the 43 DAGs assigned to the DBC's 107 cases began clearing with the DBC's Enforcement Coordinator which cases would be placed in a "hold" status (no DAG work applied) until next fiscal year. By mid-April, the "hold" status had been applied to 46 cases (43%). Over the two weeks following restoration of \$150,000 in late-April, the DAGs reactivated work on 19 cases, leaving 27 cases (25%) that were not worked until after July 1, 2002. Ultimately, the AGO billed the DBC less than \$1 million for services provided during FY2001/02 (versus a final "adjusted" budget of \$1.1 million).
- ❖ When budget changes of this type occur they have a major impact on the aging of the *most important public safety cases*, i.e., those proceeding with accusation and, presumably, disciplinary action. The delay this past fiscal year probably will add an average of at least 30 to 35 days to the aging of all AG cases, and much more to many selected cases.

Other Related Factors

- ❖ The AGO's representatives are flexible regarding the policy of wanting all cases on a specific licensees submitted at one time, rather than some one month and more two months later, etc. The policy represents the ideal situation but it should not be used as an excuse by investigators to keep cases open for extended periods (two years and more). If a licensee is receiving continuing complaints and is a clear problem, then some cases should be pursued with the

AGO while others continue to be investigated. Each situation should be discussed with the AGO liaison attorney.

- ❖ Very few DBC cases are not pursued by the AGO. Some may be returned for additional investigation, but probably less than 2 percent are not filed eventually. We view this as a credit to the investigative quality of the cases submitted.
- ❖ The AGO may be interested in prior complaints that were "Closed, Insufficient Evidence," as they may indicate a trend that is important in proving subsequent allegations. This comment relates directly to the DBC's current policy of purging the hard copy files after one year if the licensee has no priors and no subsequent complaints within that time period. Per the AGO's representatives, simple negligence could be chargeable if they occurred in separate acts over a period of time (e.g., three acts in three years or so).

Conclusions and Recommendations

Presented below are initial conclusions and some preliminary considerations for the DBC. The latter are not definitive recommendations but, instead, are intended as alternatives to be considered when developing a comprehensive Enforcement Program Improvement Plan.

- ❖ The AGO's processing goals probably are not close to reality in the recent past. There are often periods of general inactivity but it is impossible for us to determine if these are the result of AGO inaction, delays associated with opposing counsel action, or delays caused by OAH processes. However, even if the DBC knew the causes of the delay, there may be nothing significant they could do about it.
- ❖ The DBC needs to aggressively monitor all AGO cases, including calls to check on why cases are not moving through the system. This is the job of the Enforcement Coordinator, but she needs to review key cases and issues with the Chief of Enforcement on a regular basis. Currently, the person in this position is not able to devote a lot of time to this function because she has been assigned to assist the Examination Unit.
- ❖ There is an AGO liaison in the South and one in the North. The "client needs to initiate discussion" (per AGO representatives) whenever there is a potential problem (e.g., dentist with continuing series of complaints, delays in any stage of the AGO process, etc.). This type of discussion has not been initiated on a regular basis by DBC Enforcement Program staff.
- ❖ Consistent with the above statements, the Enforcement Coordinator needs to maintain summary level aging data on all cases, by major step in the AGO process.
- ❖ There needs to be a process in place whereby enforcement supervisors make a reasoned assessment of multiple case situations as they start to become

obvious. Decisions need to be made regarding the point at which action will be pursued with the AGO. This process, of course, should include discussion with the AGO's liaison. The decision whether to retain the early cases interminably should not be individualized at the investigator level, as they have been in many instances. The Chief of Enforcement recently implemented a new policy governing the handling of multiple complaint cases.

- ❖ The DBC has no way of determining whether a \$250,000 budget cut late in the year means that the attorney-hour savings equivalent to 46 cases is necessary, or whether a lesser number would have sufficed to cover this budget reduction. They also don't know if adding back \$150,000 provides funds to re-activate only 19 cases, or if that number should be greater. The criteria for the AGO's decisions in these areas are not defined and seem to be individualized at the DAG level in many instances. The process is vague and the DBC appears to have little control over the outcomes. In consultation with AGO staff, the DBC should develop strategies for more objectively determining anticipated AGO staffing requirements and expenditures.
- ❖ With regard to B&P 800-805 cases, the AGO's staff stated that the restrictions of the Latches decision are not applied as rigorously when a civil suit is being litigated (toward a settlement or judgment). The dentist cannot claim loss of memory about the incident, loss of records, etc. Therefore, by itself, the fact that the date of the incident in a B&P 800-805 report is two years or more prior to receiving the report does not obviate potential action by the AGO. If warranted by the investigative results, these cases should be submitted to the AGO for potential filing of an accusation.

C. Case Investigation and Records Issues

Discussed here are several topics related to how certain cases are assigned for investigation, practices affecting the establishment of new cases, and the retention of documentation on completed cases.

Malpractice Settlements and Judgments

- ❖ *Current Statutes and Related Practices*—We previously noted that insurance companies must report settlement and arbitration awards to the DBC when the amount involved is over \$10,000. In FY2001/02, the DBC received about 250 of these reports. Specific requirements are set forth in the Sections 800 through 806 of the Business and Professions Code. Some key features of these statutes, and DBC-related practices, are highlighted below:
 - ❑ B&P Section 801(d) requires insurers to report awards over \$10,000, but B&P Section 800(a) requires the Dental Board to maintain a file of any payments over \$3,000. The B&P Code has different insurance company reporting requirements for other licensing entities. In practice, the DBC receives many reports for awards under \$10,000, and even under \$3,000. Part of this additional reporting is related to the policy of the National Practices Data Bank to report all awards, regardless of the amount involved.
 - ❑ We were told that only “judgments” (i.e., presumably arbitration awards and court judgments) over \$10,000 are entered into licensee records that are available for public access; “settlements” are never entered, regardless of the amount. Thus, an arbitration award for \$30,000 becomes part of the licensee’s permanent public access record, but a settlement for \$130,000 does not.
 - ❑ B&P Section 805 sets forth the requirements for reporting the outcomes of peer reviews if they result in some type of discipline or negative finding. For example, for dentists in this state, one of the applicable peer review agencies is the California Dental Association. The DBC gets reports emanating from peer reviews that specify some type of patient reimbursement or payment of a patient claim. Per *West’s Annotated California Codes, Volume 3A, 2002 Supplementary Pamphlet*, SB 16 (Statutes of 2001) included a statement of legislative intent that Section 805 reports be investigated by licensing boards.
 - ❑ Currently, DBC staff purge reports of malpractice settlements and awards after five years if the case is “Closed, Insufficient Evidence,” even when the case is not assigned to a CSA for processing and potential subsequent referral for full investigation. This type of closure is considered “With Merit,” despite the lack of investigative information. The five-year retention is consistent with statutory requirements for cases “Closed With Merit.”

- ❑ B&P Section 806 requires annual statistical reports to the Legislature on the number and type of peer review reports received, and the actions taken by the boards with respect to these reports. DBC staff need to comply with this reporting requirement, which has been in effect since 1975.
- ❖ *Recent and Current Processing*—Heretofore, malpractice allegations received minimal priority and attention at the DBC both in terms of processing and assignment for investigation, as outlined below.
 - ❑ A management or supervisory position, often on a delayed basis, has been reviewing new reports to determine whether they should be (1) “Closed, Insufficient Evidence,” or (2) assigned to a CSA to obtain dental records and other available documents (e.g., depositions, peer review reports, etc.). In the latter situation, the materials gathered by the CSA are referred to a DBC consultant to determine whether assignment to an investigator is appropriate, or “Closed, Insufficient Evidence” is the disposition.
 - ❑ The initial review and determination is based on very sparse information in the report, i.e., typically a few sentences or less. Also available is a copy of the CAS (automated system) screen that shows any prior DBC complaints against the licensee, the classification of that complaint (but no details), and the disposition, including whether the file has been purged.
 - ❑ The award amounts in the few cases we reviewed varied significantly, from a few thousand dollars to \$130,000.
 - ❑ Accurate statistical data are not available on the number of malpractice cases assigned for CSA follow-up and/or eventual full investigation. However, we were told by several people that, in the past, 90 percent or more of the reports were closed due to “insufficient evidence” without obtaining records or referring the complaint to a consultant. Of the remaining 10 percent, about 9 out of every 10 cases were closed by the CSA based upon the consultant’s assessment of “insufficient evidence.” Anecdotally, then, this suggests that only about 1 percent of all malpractice reports were actually being assigned for investigation.
 - ❑ The new Chief of Enforcement has initiated more prompt and intensive review of these reports. Of 115 cases screened recently, 30 (26%) were assigned for CSA follow-up.
 - ❑ The criteria for pursuing cases alleging malpractice have been and continue to be very subjective. If two people review the same report, it may well result in different dispositions. We fully realize that settlement proposals may be accepted by dentists and insurers to avoid greater litigation costs and not as an admission of malpractice. Still, the abrupt closure of cases involving six-figure settlements causes us some concern, especially since the dispositions often are based on minimal information prepared by insurers (i.e., apparently no input by the patient’s counsel). Additionally, the failure

to investigate reports received under B&P Section 805 appears contrary to the stated legislative intent when this statute was passed.

- ❑ One reason often cited for not pursuing these cases is that the actual treatment date is very old (i.e., several years or more). The view in these instances is that the requirements of the Latches court case may constrain or bar Board action. That is, the Latches decision limits disciplinary action to incidents that have occurred during a reasonable period of elapsed time. However, our recent conversations with AGO representatives indicate that Latches often will not be a defensible position if the incident has been under litigation for most of the time preceding the award.

CONCLUSIONS AND RECOMMENDATIONS

- ❑ We have already recommended that malpractice cases be processed consistent with established procedures for other complaints. Beyond that, we are concerned that these cases are not given sufficient priority primarily because the patient has not filed a complaint with the DBC (and, after receiving his/her award, may be somewhat disinterested in further involvement). There are also issues related to inclusion of data on licensee records and legislative reporting. Although the number of reports is relatively small, there may be more sustainable evidence of negligent care in some of these cases than is available in a typical single complaint received directly from a patient (e.g., results of a peer review, depositions, etc.).
- ❑ We recommend that a thorough review be completed of the processing, investigation, and disposition of reported malpractice settlements and awards, and the records related thereto. The Chief of Enforcement has recently begun a review of the policies and procedures governing malpractice case handling, record keeping, and reporting.

Other Investigations and Records Issues

- ❖ *Denti-Cal Cases*—These cases represent the only exception to the policy that each patient involved in a complaint constitutes a separate case (i.e., a separate case number and investigation). Reports of negligence or other violations received from Denti-Cal are counted as a single case for *each dentist*, even if there are 20 or 30 patients involved. Although there are some investigative economies associated with investigating the same dentist for alleged violations involving multiple patients, the Denti-Cal records policy has the following shortcomings:
 - ❑ It is inconsistent with the fact that the dentist's performance with respect to *each* patient has to be investigated both as a unique incident and as part of an overall pattern.
 - ❑ It is inconsistent with how all other multiple complaints against a single dentist are recorded by the DBC.

- ❑ It under-reports the true caseload, at least in terms of how a “case” is defined now.
- ❖ *Quality of Care Complaints Against Licensees With “No Priors”*—Disciplinary action for first-time, care-related complaints against a dentist will not be pursued unless gross negligence can be established. That is, a single complaint involving simple negligence will not be referred to the AGO because the law requires that the violation involve repeated acts of negligence, or gross negligence. The determination of negligence versus gross negligence is made in nearly all cases by the DBC’s consultants. Conceivably, even some gross negligence complaints will not be referred for disciplinary action, depending on the unique circumstances of each case.

Cases not assigned to an investigator may be closed “Insufficient Evidence” (which is coded as “With Merit” by the CAS), or closed with some other classification that CAS codes as “Without Merit.” Records for the former cases are retained for five years; for the latter cases they are purged after one year. Concerns regarding these types of complaints are outlined below:

- ❑ Some enforcement personnel believe they need more options for dealing with “first-timers,” particularly when only simple negligence is provable. Of principal concern to patients in these cases is reimbursement for the less than satisfactory dental work.
- ❑ The one-year purging of “Without Merit” cases could become a self-perpetuating weakness. For example, a dentist could be the subject of a complaint every 15 to 16 months for four years or so, each of which is closed “Without Merit.” The disposition of the second and third complaints may have been different if the records from the former cases were available.
- ❖ *Records Retention Practices*—In general, the practice is to purge (destroy) the hard copy records of all cases closed “Without Merit” after one year and all closed “With Merit” in five years. Cases resulting in disciplinary action are never purged. Our initial review, however, noted the following needs:
 - ❑ There is no written policy on the purging of inspection cases; it appears that these cases have never been purged.
 - ❑ There is some concern that the one-year purging of “Without Merit” cases may be premature. The “merit” assessment is admittedly judgmental and might vary in some cases if a different consultant conducts the review. More important, the investigation of subsequent complaints may be facilitated by the availability of records on a prior “Without Merit” case. As an example, we noted one case where a \$35,000 settlement was reported for a dentist who had a quality of care complaint about 16 months prior that had been purged. The decision not to investigate the settlement case may have been different if the records of the previous complaint were available.

- ❑ To some extent, we perceived that there is an urgency to purge some cases in order to make space available for new cases. The DBC's records storage area is very small and cramped, and often boxes of cases must be stored off-site until their purge date arrives.

The state has centralized image processing capabilities, but the DBC has not investigated the possibility of establishing a program of this type within its offices. The pressure to clear out hard copy files could be lessened by using an image processing system.

- ❑ The phrases "With Merit" and "Without Merit" are derived from the statutes. However, they are not easy to interpret objectively in borderline cases. The Medical Board also has noted difficulties with these phrases. Alternatives should be evaluated to determine if more objective standards could be developed for determining when to purge records.

CONCLUSIONS AND RECOMMENDATIONS

- ❑ Regarding Denti-Cal cases, the current practice of counting only one case for multiple patients is not a major issue in our view; nevertheless we believe it warrants additional review. We are not prepared at this time to recommend a complete changeover to the standard case initiation and numbering practice, although this is a primary alternative that should be considered.
- ❑ The DBC should evaluate the need for, and availability of alternatives to traditional discipline that might be legislated for "first timers." Additionally, for these cases (as well as others), the Board's ability to enforce reimbursements should be evaluated.
- ❑ The DBC needs to review its policies and practices related to file retention (e.g., one-year purging of "Without Merit" cases). Where applicable, the plan may include proposed legislation (e.g., to deal with constraints related to the "With Merit" and "Without Merit" phrases).
- ❑ The DBC should conduct an assessment of its file retention and related imaging needs, including assessment of benefits and costs associated with contracting with the Medical Board, State Records Center, or directly with an outside service provider to archive case files.

D. Other Issues Affecting Operations

- ❖ *Priority Codes*—The DBC has 30 different codes for assigning investigative priority to a case. Our assessment of these codes is as follows:
 - ❑ The codes are primarily a list of case types or classifications, such as drug/alcohol, unlicensed practice, unsafe sanitary conditions, advertising violation, etc. As such they are not useful as a true measure of priority. To illustrate, a malpractice settlement case involving severe injury (priority #12) might easily warrant higher priority attention than a mental or physical illness case (#7) or an unnecessary treatment complaint (#9).
 - ❑ The priority codes are not used by investigators or CSAs to guide the allocation of their available time.
 - ❑ Some COMDA licensee representatives have a perception that the current priority system is used to downgrade COMDA cases so that they are investigated after complaints against dentists. We found no evidence supporting this perception. There is no separate priority code for a COMDA case; each of these cases is assigned the priority that would be applicable if it involved a dentist (e.g., unlicensed practice, drug/alcohol use, etc.).
- ❖ *Multiple Agency Involvement in Fraud Cases*—At times, two or more agencies may be investigating fraud allegations against the same dentist, i.e., the Department of Justice, the Department of Insurance, and the DBC. Typically, the DOJ's involvement is limited to high-end fraud cases so there is usually no overlap in their work. However, the Department of Insurance and the DBC handle similar types of cases wherein the complainant is always an insurance company or Denti-Cal.
- ❖ *Closing Letters*—When an investigation is closed, a letter is sent to the complainant and the dentist. When the closure is accomplished without referral to an investigator or inspector, and/or without citation or referral to the AGO, closing letters can be troublesome. They may send the wrong message to patients that their complaints lacked validity and/or would not be subject to further investigation. If not tactfully and carefully prepared, the letters may be interpreted by patients as questioning their veracity or, at a minimum, indicating a lack of DBC concern about their allegations. The appropriate wording of these letters is a matter of some concern to the Enforcement Supervisor and the new Chief of Enforcement. Because they require special review, they also represent an area where backlogs have occurred.

We believe that an analysis of varying types of cases and varying closing phrases can produce a set of guidelines for preparation of closing letters. For example, the letters could routinely note that the case will be retained in the DBC files and may be reactivated if new information (including additional complaints) is received. In other words, the complainant would be told that active investigation of the case is being “suspended” but that it could be re-initiated if future circumstances warrant.

Please note that adverse reaction to closing letters probably would lessen if the Board had more authority to enforce patient reimbursement in certain cases. We understand that this is the most important concern of consumers involved in relatively routine complaints against dentists.

Conclusions and Recommendations

- ❑ Replace the existing case priority system with one that ranks cases based on their intrinsic attributes, not their classifications. The new system should have only three to five priority levels and be used eventually to guide separate backlog and aging reporting and analysis. Allowance also should be made for changing the priority if the investigation determines that the facts justify a higher or lower priority. Criteria for defining each priority level need to be developed.
- ❑ Although it is not a significant issue, it may be more efficient to structure an agreement with the Department of Insurance regarding the fraud cases that both organizations investigate now.
- ❑ The DBC needs to develop alternatives for preparing closing letters more efficiently and, in terms of consumer reaction, more satisfyingly. Our suggested approach, described above, should be considered.



V. ASSESSMENT OF OTHER POTENTIAL ISSUES

This section covers various other issues identified during our Phase I review of the Board's Enforcement Program. Topic headings included here are as follows:

- ❖ Customer Relations
 - ❑ Customer Satisfaction Surveys
 - ❑ Complaints Alleging Unsatisfactory Service Provided by DBC Enforcement Staff
- ❖ Disclosure Policies
- ❖ Proactive Enforcement
- ❖ Drug Diversion Program.

A. Customer Relations

- ❖ *Customer Satisfaction Surveys*—The DBC does not conduct annual customer satisfaction surveys, or even keep a log or file of complaints that it has received regarding its complaint handling and investigation services. Consequently, there was little credible information available that we could use to determine the level of customer satisfaction with Enforcement Program services.

About two years ago, in preparation for an upcoming Sunset Review Hearing, a special one-time survey was conducted of persons that had filed complaints with the DBC during the past four years. However, due to a number of significant methodological problems, the results of this survey cannot be viewed as credible. Specifically, most of the survey questions involved assessment of the DBC's handling of the complaints. The DBC attempted to survey, either by mail or telephone, about 10 percent of all persons who had submitted complaints at any time during the preceding four years (1,200 persons randomly selected from a universe of about 12,000 complainants). However, given the amount of calendar time that it takes the DBC to process complaints, a substantial portion of the persons surveyed would obviously not yet have been able to provide such an assessment. Also questionable is the validity of responses provided by persons that submitted complaints as many as 3 or 4 years earlier. Finally, only 191 responses were obtained to the mail survey of 600 complainants, and only 68 responses were obtained to the telephone survey of another 600 complainants. The statistical validity of the survey results is highly suspect, given the small numbers of survey respondents.

- ❖ *Complaints Alleging Unsatisfactory Service Provided by DBC Enforcement Staff*—This subject deals with consumers who are dissatisfied with the investigative service (or result) associated with complaints they made. As such, the subject is associated with the foregoing discussion of "Customer Satisfaction Surveys." If consumers complain to the Governor's Office, the Legislature, or the DCA, formal documentation and a log entry are completed at the DCA. The documentation then is sent to the DBC, where a supervisor investigates the allegations. The results are documented in a return memo to the DCA.

On the other hand, if the consumer complains directly to the CSA, inspector, or investigator who was assigned to the case, there may be no documentation or record, and the supervisor typically will not know about it. Exceptions do occur, especially if the investigation is re-opened or the complainant is particularly irate.

Conclusions and Recommendations

- ❑ The DBC should immediately disseminate a customer satisfaction survey for all complaints *closed* during FY2001/02.
- ❑ The DBC should establish a formal procedure requiring documentation of any consumer complaint, regardless of who receives it, with copies for

the investigative file and the supervisor. The supervisor should maintain a log of such complaints, including their disposition, and monitor the organization's response. The log should include the DCA formal referrals as well. Additionally, in the more serious or problematic instances, the supervisor should assume responsibility for investigating the complaint. We believe these are fundamental steps to ensuring adequate response to complaints about DBC service.

B. Disclosure Policies

The DBC has no written policy governing the information that may be provided public callers regarding licensees. Written directions are particularly important in requests for complaint-related information. Requests for such information are typically routed to one or two people who, generally, limit the disclosure to actual incidents involving Board disciplinary action and reports of malpractice “judgments” over \$10,000. Information on settlements related to alleged malpractice, or complaints that have not concluded with disciplinary action, is not provided. Other comments related to this issue are summarized below

- ❖ On July 16, 2002, a draft DCA memorandum on the subject of “Minimum Standards for Consumer Complaint Disclosure” was released to all of the Department's boards and bureaus. It states that *consumer* complaint information shall be disclosed under the following conditions:
 - ❑ A substantiated consumer transaction has occurred
 - ❑ The business (dentist) has had an opportunity to respond to the complaint
 - ❑ A probable violation of law has occurred or there is a risk of public harm
 - ❑ The complaint will be referred for legal action (i.e., to the AGO or a DA).
- ❖ Per the draft memo, exceptions to the above statement would apply if it is determined that:
 - ❑ The complaint is without merit
 - ❑ The complaint involves a non-consumer matter
 - ❑ Disclosure is prohibited by statute or regulation.
- ❖ Application of these and other guidelines in the draft memo may substantially alter DBC practices with respect to disclosing information on consumer complaints. For example, they may permit disclosure of malpractice settlements and most, if not all, cases referred to the AGO or a DA/CA.

Conclusions and Recommendations

- ❑ The foregoing comments merely reflect the results of a very preliminary review of disclosure issues; a full analysis will require involvement of legal expertise. DBC staff need to fully analyze disclosure-related policies and issues, perhaps with legal assistance from the DCA. Also, governing laws and Board policies need to be fully documented and available for reference by staff. This is a fairly important issue, at least in the minds of some consumer advocacy groups.

C. Proactive Enforcement

- ❖ For the most part, the DBC is not involved in proactive enforcement. There is the “HALT” program in Los Angeles County which is a cooperative health-related enforcement program involving the key licensing agencies and County health and law enforcement departments. The focus of the program is unlicensed provision of health services. Beyond this, the DBC does not undertake proactive enforcement efforts, such as:
 - ❑ Unlicensed activity (except in Los Angeles County)
 - ❑ False, misleading, or otherwise prohibited advertising
 - ❑ Special outreach efforts for at-risk populations, perhaps in conjunction with Denti-Cal and selected social service agencies.
- ❖ Representatives of several of the special interest and advocacy groups that we interviewed expressed concerns about the limited nature of the DBC’s consumer and industry outreach and education efforts, and associated relationships to the effectiveness of the Enforcement Program. For example, the Enforcement Program is seen as having little, if any, presence in local communities. As a result, consumers and licensees are less likely to be aware of or report unlawful activities to the DBC. A consensus exists that the DBC needs to significantly improve its outreach, education, and other proactive enforcement-related activities.

Conclusions and Recommendations

- ❑ We believe that these and perhaps other areas of the Enforcement Program may benefit from some proactive efforts, and that alternatives of this type should be evaluated. This assumes, of course, that hiring freeze exemptions are obtained for the existing vacant investigator positions; otherwise there will not be sufficient resources available to perform the additional work.

D. Drug Diversion Program

- ❖ The DBC operates a drug diversion program that is statutorily required. The contractor, Managed Health Network (MHN) in San Rafael has had the contract since the program's inception about 1989. Currently, the cost is about \$199/month per participant. There are usually between 90 and 100 people in the program, with many staying four or five years.
- ❖ At the end of 2001, the program had 422 referrals since its inception. Of these, 204 were accepted, 75 withdrew during the first phase of their involvement, and 59 were not accepted by one of the Diversion Evaluation Committees (DECs) that screen and evaluate candidates. The remaining 84 were still in the program.
- ❖ Of the 204 participants who were accepted, 127 "successfully completed" the program and the others left for various reasons (e.g., dismissed for non-compliance, death, transferred, etc.). Program "success" is defined uniquely for each participant. "Recidivism," however, is defined simply as the subsequent intake of one who had successfully completed the program. Resources are not available to track all prior participants to determine if they reverted to using drugs or alcohol without being referred back to the program. Unfortunately, up to date recidivism data were not available. However, it may be in the range of 25 percent, as defined above.
- ❖ The Diversion Program is not the subject of much discussion or concern within the DBC. The only improvement-oriented issues we noted while briefly reviewing this program are outlined below.
 - ❑ **Drug Tests for Probationers**—Some individuals are in the Diversion Program and on probation due to addiction. In these instances, biological sample testing is done separately under both programs.
 - ❑ **Access to Self-Referral Information**—Presently, if dentists or COMDA licensees refer themselves to the Drug Diversion Program on a self-referral basis, information regarding their participation is not readily available to CSAs, inspectors, or investigators who are assigned subsequent complaints against them. We understand that consideration is being given to automating this information and allowing access to case-handlers on a password basis. We have not evaluated this alternative fully as it would require a legal analysis of B&P Section 1695.5 regarding restrictions on participant data.
 - ❑ **Strategic Plan Comments**—We noted previously in Section III that the Board's strategic plans for at least the past two years have included the following objective (paraphrased): *To complete an analysis of the drug diversion program to ensure it is staffed and funded adequately, and that it provides consumer protection.* The objective also included a desire to "...seek ways and means to improve the quality and effectiveness of the Board's diversion program and take whatever actions are deemed

necessary to implement identified changes.” We understand that these objectives dealt principally with a desire to improve on-site, workplace monitoring of dentists in the program.

After some initial discussions about two years ago—at which the probability of substantial increases in costs was raised—nothing further has been done to pursue this matter. We have not analyzed the issue in detail and do not know the extent to which current workplace monitoring is presenting problems.

Conclusions and Recommendations

- ❑ When someone is being tested for drugs under both the diversion and probation programs, we recommend that only the diversion program testing be completed, and that the results be shared with the probation monitor. This does not involve any violation of confidentiality; everyone involved knows that the individual is in both programs and being tested for drugs in both programs. Moreover, we are told that the diversion program tests more frequently and for more substances (i.e., more sophisticated testing screens). Implementation of this suggestion would not affect a lot of participants, i.e., probably less than 25 to 30. However, it would conserve the time of DBC probation monitors who have to collect the samples (in the Northern region) or arrange for their collection (in the Southern region).
- ❑ The DBC should attempt to devise a means of providing self-referral diversion program information to those handling subsequent complaints against licensees. If this cannot be done within the provisions of current statutes, a legislative amendment should be requested. Program participation information may materially benefit investigative efforts. About one-third of all program participants are self-referrals.
- ❑ Alternatives to the current Drug Diversion Program should possibly be considered in some cases. We understand that the treatment approach currently used is somewhat rigid, and not always aligned with the needs and circumstances of potential participants.